

Pages 1 - 102

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ORRICK, JUDGE

HUAWEI TECHNOLOGIES CO., LTD.,)
HUAWEI DEVICE USA, INC., and)
HUAWEI TECHNOLOGIES USA, INC.,)

Plaintiffs/Counterclaim)
Defendants,)

vs.)

No. C 16-2787 WHO

SAMSUNG ELECTRONICS CO., LTD,)
SAMSUNG ELECTRONICS AMERICA,)
INC.,)

Defendants/Counterclaim)
Plaintiffs,)

and)

SAMSUNG RESEARCH AMERICA, INC.,)

Defendant,)

vs.)

HISILICON TECHNOLOGIES CO.,)
LTD.,)

Counterclaim-Defendant.)

San Francisco, California
Friday, August 18, 2017

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

(Appearances continued on next page)

Reported By: Katherine Powell Sullivan, CSR #5812, RPR, CRR
Official Reporter - U.S. District Court

APPEARANCES (CONTINUED) :

For Plaintiffs:

SIDLEY AUSTIN LLP
555 California Street
San Francisco, California 94104

**BY: MICHAEL BETTINGER
HELEN YANG
ATTORNEYS AT LAW**

SIDLEY AUSTIN LLP
One South Dearborn
Chicago, Illinois 60603

**BY: DOUGLAS LEWIS
JOHN W. McBRIDE
ATTORNEYS AT LAW**

For Defendants:

QUINN, EMANUEL, URQUHART & SULLIVAN
777 6th Street, NW, 11th Floor
Washington, DC 20001

**BY: ALAN LEE WHITEHURST
MARISSA R. DUCCA
ATTORNEYS AT LAW**

QUINN EMANUEL URQUHART & SULLIVAN, LLP
50 California Street, 22nd Floor
San Francisco, California 94111

**BY: CHARLES KRAMER VERHOEVEN
BRIAN E. MACK
ATTORNEYS AT LAW**

QUINN, EMANUEL, URQUHART & SULLIVAN LLP
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, California 94065

BY: RAY R. ZADO, ATTORNEY AT LAW

Friday - August 19, 2017

8:39 a.m.

P R O C E E D I N G S

---000---

THE CLERK: We're here in case number 16-2787, Huawei Technologies versus Samsung Electronics Company.

Counsel, please come forward and state your appearance.

MR. BETTINGER: Good morning, Your Honor. Mike Bettinger, along with my colleagues Doug Lewis, John McBride, and Irene Yang, on behalf of Huawei.

THE COURT: Welcome.

MR. VERHOEVEN: Also in attendance are a number of the Huawei engineers and personnel.

THE COURT: Thank you.

MR. VERHOEVEN: Good morning, Your Honor. Charles Verhoeven on behalf of Samsung. And with me are my colleagues Alan Whitehurst, Ray Zado, Marissa Ducca, and Brian Mack.

THE COURT: Welcome.

MR. VERHOEVEN: And we also have a number of representatives from our client here today too.

THE COURT: Excellent. Welcome.

All right. So you have my tentative. Does everybody just accept it?

(Laughter)

THE COURT: No? All right.

MR. BETTINGER: For the most part, yes.

1 **THE COURT:** All right. Well, let's start with
2 Mr. Bettinger. Why don't you go ahead and argue the claims
3 that you're -- or the terms that you're concerned about.

4 **MR. BETTINGER:** Okay.

5 **THE COURT:** Is that going to throw your argument in
6 some way?

7 **MR. BETTINGER:** I didn't know if you wanted to take
8 them in the order of your tentative ruling. But we can do it
9 that way.

10 **THE COURT:** No, I'm happy to do it.

11 **MR. VERHOEVEN:** The parties had arranged for a
12 structure where 45/45/45/45, because we didn't want to run out
13 of time to fit into the -- or less.

14 **THE COURT:** Or less. Okay.

15 **MR. VERHOEVEN:** Or less.

16 **THE COURT:** Okay. Good.

17 **MR. BETTINGER:** We're not going to need 45.

18 **MR. VERHOEVEN:** So the way we had agreed to is they
19 would go on their what we call offensive patents, their patents
20 asserted against Samsung, and then we would respond. And then
21 we would go first on our patents asserted against Huawei, and
22 they would respond.

23 **THE COURT:** But now you have a tentative.

24 Well, if you have a system that you think is the best
25 system, if you've agreed on that, that's fine, and present it

1 that way. Otherwise, we can go claim by claim or -- I was
2 thinking what you would do is argue the ones that you're
3 concerned about.

4 **MR. BETTINGER:** Yes.

5 **MR. LEWIS:** Yes.

6 **MR. BETTINGER:** That will be our plan.

7 **THE COURT:** That would make sense to me.

8 So, Mr. Verhoeven, why don't we start with number 1.

9 **MR. VERHOEVEN:** Okay. We have slides, Your Honor.

10 **THE COURT:** Great.

11 And let me just say on number 1, Mr. Bettinger may have
12 more work than he thinks because I -- I think I agree with
13 Samsung's argument that either payload size or the redundancy
14 version needs to go forward; but not both at the same time. So
15 then I agree with that.

16 I didn't see why it was necessary -- I think that's what
17 the term says. And so I didn't see why I needed to add
18 anything further.

19 **MR. VERHOEVEN:** Could we go to the first two slides.

20 The reason we believe that at least we should have some
21 guidance from the Court on how to interpret those plain words
22 is because we think there's a dispute about the interpretation.

23 And so here I just have *02 Micro*, which is the seminal
24 case on this issue, where both parties are saying, yeah, it has
25 its plain meaning, but they disagree about what that meaning

1 is.

2 And so, you know, here it says the purpose of claim
3 construction is to determine the meaning and scope of the
4 patent claims asserted to be infringed. And when the parties
5 raise an actual dispute regarding the proper scope of those
6 claims, the Court should resolve that.

7 And so I've had situations, Your Honor, where even after
8 *Markman* a dispute didn't become apparent until trial.

9 But the parties were arguing that this claim had meant
10 different things. And it had previously been just plain and
11 ordinary meaning. And the judge didn't resolve it as a matter
12 of law. And the Federal Circuit reversed it under *02 Micro*
13 because it's the judge's job to resolve the disputes about what
14 the claims mean.

15 So that's why we -- you know, I agree with you. We
16 interpret the words to mean what you just said. And we're fine
17 with not changing any of those words. But we -- we urge the
18 interpretation of those words that we -- just as you just said
19 them.

20 And if the order you issue just says plain and ordinary
21 meaning, but clarifies that that's what the plain and ordinary
22 meaning at least requires, that's fine with us. We just want
23 to get the dispute resolved so we're not arguing in front of
24 the jury.

25 **THE COURT:** All right. So Mr. Bettinger or whoever is

1 going to take this on.

2 **MR. LEWIS:** Your Honor, good morning. Douglas Lewis.
3 We also have a slide presentation --

4 **THE COURT:** Okay.

5 **MR. LEWIS:** -- which if I could hand up.
6 Your Honor, if I may provide one to your law clerk as
7 well.

8 **THE COURT:** Sure. Yes, please.

9 **MR. LEWIS:** So, Your Honor, let me just address, you
10 know, head on your concern that you indicated a moment ago.

11 The issue here with the claim is the actual language of
12 the claim "dynamically indicative." And while that requires
13 the dynamically indicative of being one or the other, it
14 doesn't restrict a default value of RV. And that's really the
15 dispute.

16 The patent throughout the specification talks about a
17 default value of RV. In addition, there's a dependent claim
18 talking about a default value of RV. I'll explain in my
19 presentation how that fits into the claim language and how that
20 can't be excluded both because of the specification and also
21 the claim language itself.

22 So Samsung's construction would exclude an RV. They're
23 saying the field has to indicate only one of the two parameters
24 at a given time. The specification, however, says the opposite
25 when it talks about the RV value, which is implicitly part of

1 the payload size when that's transmitted. That's throughout
2 the patent.

3 And I'll show you this slide. This is cited in our brief.
4 There are literally, you know -- I guess I didn't count how
5 many there are.

6 **THE COURT:** Lots.

7 **MR. LEWIS:** -- lots of places where the default value
8 of RV is talked about. Also the dependent claim, both Q and 8,
9 talk default value.

10 So default value of RV has to be fit into the scheme of
11 these patents. That part is clear. The question is how does
12 it do that.

13 Well, the key language is, it doesn't say the field
14 indicates one or the other, payload size or RV. It says
15 dynamically indicative. And when they put this claim language
16 in, they knew what they were trying to cover. And they did
17 this very carefully.

18 So, Your Honor, this is the chart I created for the
19 tutorial from the language of the patent. I want to just go
20 back to that because I think it's helpful to understand this.

21 At the top is all of the language in the -- in the claim
22 that's relevant to this dispute. Just so you don't wonder why
23 there's a 10 there, it was the subject of a certificate of
24 correction and it's actually deleted. So I'm going to leave
25 the X up there but explain why I put an X there.

1 So in this table we have two parts. There's the 0 through
2 3 part, which is, in the claim, the second predetermined range.
3 And that's dynamically indicative of RV only. Why? Well, RV
4 changes during that part. There is no payload size, and so
5 it's not dynamically indicative of that.

6 More interesting is the bottom part, which is the first
7 predetermined range in the claim. And at that part of the
8 numbers, which is 4 through 63 in this example, it's
9 dynamically indicative of payload size.

10 So you're providing information about payload size that
11 the receiver didn't already know, so you're explicitly, perhaps
12 would be the way to put it, providing payload size. So you're
13 dynamically indicating payload size. The payload size is
14 changing; it's dynamic. That's what's happening in the first
15 predetermined range.

16 However, at that point you're also providing the receiver
17 the knowledge, the information that you should use a default
18 RV. So it's implicitly part of the payload size, the
19 indication to use a default RV. It's not explicitly there.
20 And that's why you have the language "dynamically indicative."

21 Samsung's construction really eliminates the word
22 "dynamically." And obviously you can't do that. There's lots
23 of law on that. That's an easy one.

24 RV is the same. It's constant throughout this first
25 predetermined range. It's not dynamically indicative of RV, so

1 it is -- consistent with the claim, it's dynamically indicative
2 of only one of RV or payload size.

3 But RV, as a default, has to be part of the scheme because
4 that's in the spec. And it's because it's known from the
5 payload size. Samsung is trying to eliminate that. And the
6 reason is this: This is a table, I think it's in our brief,
7 from the standard. And obviously you don't construe claims
8 based on the accused product, but this gives us context about
9 why we're having this argument.

10 Just to sort of clear things up, the field is the leftmost
11 portion. That's the number that you're getting. This is the
12 payload size. That's the redundancy version.

13 In this table, it's dynamically indicative of payload size
14 from 0 to 28 because those are -- that's the information that's
15 actually being explicitly transmitted.

16 The last three states, 29 through 31, are dynamically
17 indicative of RV because those are changing at that point.

18 Now, in this first range up here, 0 to 28, this table
19 shows the RV value. So it shows what the receiver knows, the
20 default. It's not being transmitted because the dynamically
21 indicative information is only the payload size.

22 But this just shows what the receiver knows when that
23 receiver gets that payload size. So it's not dynamically
24 indicative of RV. As you can see, RV is constant. It's the
25 default, 0.

1 So what you have in this range is being dynamically
2 indicative of only one payload size, not RV. But RV is, of
3 course, the default. There's just no dispute that the patent
4 appreciates that, understands that, and the claim covers that.

5 So what we have is really a backdoor attempt by Samsung to
6 eliminate this default RV that the patent talks about the
7 claims do cover explicitly claimed in the dependent claim,
8 dependent to the same claim that the dynamically indicative
9 language is in, not a different claim. It's a different claim
10 but not a different family of claims.

11 And so the question really to Samsung is the one I have up
12 here, which is they admit that the receiver may be
13 preprogrammed to apply a default value for RV when the payload
14 size is transmitted. And then they say that the default value
15 itself is not included in the control signaling.

16 But how would the receiver ever know that? The receiver
17 knows it because the receiver knows, when it gets the payload
18 size, to use a default RV. So that payload size, while it has
19 a dynamically indicative payload size, has a not dynamically
20 indicative constant pre-known default RV. And that's, like I
21 said, part of the patent and part of this word "dynamically."

22 So we didn't think any of this needed construction because
23 that's what the claim says, "dynamically indicative." As I
24 showed, it's only dynamically indicative of one or the other,
25 never both, either in the example in the patent or, for that

1 matter, what we're accusing.

2 What we propose as an alternative was just to make it
3 clear that the default RV was in the picture. Otherwise, we
4 didn't think this needed any construction.

5 **THE COURT:** Thank you.

6 **MR. LEWIS:** With that, I'll --

7 **THE COURT:** All right. Mr. Verhoeven.

8 **MR. VERHOEVEN:** Thank you, Your Honor.

9 Before I get to even the claim language and the
10 interpretation, let's just take a step back and ask ourselves,
11 what's the problem and solution of this patent?

12 The problem was, as stated in the specification, that
13 you're using bits unnecessarily where, for example, you're just
14 repeating the RV over and over and over again when you don't
15 need to. Or you're repeating the payload size over and over
16 when you don't need to.

17 And the solution is use less bits and alternate. So you
18 use the payload size when you need payload size, and you use
19 the RV version when you need the RV version. That's the whole
20 point of the patent.

21 So the argument that the claims will encompass
22 transmitting both of them is contrary to the entire patent, the
23 entire purpose of the patent. But let's go into -- let's go
24 into the details.

25 Now, Your Honor will remember this from the tutorial. So

1 what we're talking about in this patent is you have a data
2 packet that comes along and you have these control signals.
3 And the control signals, among other things they provide is
4 payload size in the RV version. And that's generally what
5 this -- what the background is for this technology.

6 Here we have the claim. Now, in claim construction the
7 first place you start, when you try to interpret the words or
8 the meaning of the claims, is the words of the claim.

9 And so here, if you look at the claim itself, you'll see
10 that it requires that the signal, this signal we're talking
11 about, be either the payload size or the RV version within a
12 specific field.

13 So let's go through this. So, first of all, it says
14 dynamically indicative of one of payload size or a redundancy
15 version. So that clearly says just what I said.

16 But then when you put -- when you put it in context --
17 I've added this light blue here. And you'll see the field
18 includes N bits. A state of the field is indicated by all of
19 the N bits of the field. The field is dynamically indicative
20 of one of a payload size or a redundancy version through the
21 state of the field.

22 So the state is payload or RV. And it says right there
23 that the field is indicated by all bits. So you can't have
24 other bits that indicate something else.

25 **THE COURT:** So what does "dynamically indicative" mean

1 then?

2 **MR. VERHOEVEN:** What it means is between payload size
3 or redundancy version. That's what's dynamically changing.
4 And I'll show you when we get to the specification.

5 But in -- and this thing about it being in the specific
6 field is very important to understand when you're addressing
7 their argument about the default value. And that's why I'm
8 focusing in on it, Your Honor.

9 And then you see, furthermore, in the claims they say,
10 wherein the payload size is indicated through a first state.
11 So we know that the -- of the field. So we know that that
12 means that all the bits in that first state of the field
13 indicate payload size.

14 And then it says, and the RV is indicated through a second
15 state of the field. So that means all bits in that field
16 indicate only RV.

17 So the claim language itself makes it very clear that it's
18 either payload or it's RV; it's not both.

19 And then, if you go to the specification, you'll see
20 consistently throughout the specification that it's talking
21 about payload or RV within one field.

22 So if you look at 201, or Figure 2, 201, the transmitter
23 indicates payload size or RV through different states of one
24 field in the control signaling. The transmitter sends payload
25 size or RV on the field.

1 And I'm not going to read all of these, but that's what
2 these other portions of the spec also -- payload size or RV in
3 the field repeatedly and consistently throughout the claim.

4 Here's a specific -- more specific portion of the
5 specification that illustrates what we're talking about.

6 So the first -- the first part of this paragraph says,
7 "For ease of identification" -- and for the record this is
8 column 5, line 9 through 17 on slide 9. "For ease of
9 identification, in a 6-bit field, 4 states whose foremost upper
10 bits are all 0s can indicate 4 different RVs." And then they
11 say, "That is, the 4 states" -- and they list the codes --
12 "indicate RV1 through RV4."

13 And so below we have an illustration of this. You have a
14 6-bit common field. And on the what I would call rows in this
15 chart are the states. And the columns are the bits. And
16 you're using all the bits. But the code -- those are the codes
17 that specifically indicate the redundancy version in the field.

18 And the spec goes on and says, "Accordingly the remaining
19 60 states (any bit in the 4 foremost upper bits of the
20 remaining non-zero) indicate 60 different payload sizes."

21 And so from 4 to 64 in this example, you use all the bits
22 to show that it's payload size. Now, let's -- so the spec
23 supports the claim. The claim obviously says it's either/or.

24 And let's look at the prosecution history.

25 So, as I mentioned in the tutorial, Your Honor, Samsung

1 has a patent, the Kim patent, that was very, very close to this
2 patent and its prior art to this patent by, I think, a couple,
3 three years. And the examiner rejected this patent based on
4 Kim.

5 And so this is -- slide 10 here is page 3 of a response to
6 an office action rejecting the patent, dated May 9th, 2012.
7 And it says, Kim at best discloses a HARQ controller that uses
8 NDI and the common field together to indicate a RV or -- and
9 those codes there, let's just say they're payload size.

10 However, according to Kim, the number of bits in the
11 common field indicative of the RV is distinct from the number
12 of bits in the common field indicative of the payload size.
13 The disclosure of Kim is, therefore, clearly different from the
14 present invention as defined in dependent claim 1.

15 Then they have a picture, and they show that for the RV
16 they simply don't use -- there's no -- there's nothing in the
17 bits. Whereas, with payload size they -- they use all of the 6
18 bits.

19 And whether that's a distinction that is patentable, Your
20 Honor, we'll get to later in the case. But this is their
21 distinction. They say, Our patent uses every bit on both
22 states. Their patent only uses part of the bits on the RV
23 state.

24 And they say, for example, claim 1 -- that's the '278
25 claim 1 and prosecution -- requires that both the payload size

1 and the RV are indicated through states of a field where each
2 of the states is indicated by all the N bits of the field. In
3 contrast, Kim only uses some bits, but not all bits, of the
4 common field.

5 So if you're using "all bits of the common field" to
6 indicate one state, then it can't be both at the same time,
7 which is our point.

8 And this is repeated again in another response to an
9 office action, dated December 28, 2011. This is slide 11. And
10 we're showing page 10 of that response. And they just repeat
11 the same thing you just -- we just saw.

12 The payload size and RV of amended claim 1 -- that's their
13 claim -- are indicated through the same number of bits and the
14 same bits, i.e. all N bits of the field.

15 And then it says, a state of a field is indicated by all N
16 bits of a field where an N is a positive energy greater than 1,
17 wherein the field is dynamically indicative of one of payload
18 size or redundancy version through the state of the field.

19 So the field and the fact that it requires all bits
20 removes any question about whether or not dynamically
21 indicative of one or the other could mean both. It can't.

22 So one more thing on the specification. You saw a
23 citation to 25 cites in the specification where default values
24 is mentioned. I'm just going to walk you through one example.
25 But this is consistent throughout.

1 There's a number of charts that look similar to this chart
2 here. This is *Markman* slide 13.

3 We're looking at Figure 3 on the right of the '278 patent.
4 And on the left we're looking at column 6, lines 16 through 37.
5 But you could do this with Figure 5, Figure 6, all the
6 different figures. Little more complicated, so I'm using the
7 simple one.

8 But what this is talking about is, it's walking through
9 the process. So it's talking about a state on a specific field
10 in the control signaling. And this is when the packet is
11 initially -- you see right above it, it says this is the
12 initial packet when you're starting the communication.

13 In the initial packet, the state on a specific field in a
14 control signaling is used to indicate the payload size, comma.
15 An important comma. And then it says, and the default value of
16 the RV applies. And if you look at the picture, payload size
17 is included in this arrow going to the terminal; RV default
18 value is not.

19 The fact is, the way that works is, in a separate signal
20 entirely the base station tells the UE, the terminal or the
21 phone, whatever you want to call it, this is going to be your
22 default value for these communications.

23 And so they don't need to send it every time. It just
24 gets sent on a separate signal. And it's only used when
25 there's a new payload size in all the embodiments in this

1 patent. So here what's being sent is just the payload size.
2 The RV value is already existent on both the base station and
3 the terminal.

4 Then what happens is it -- I'm going to skip over some of
5 these words, but the terminal doesn't get the packet. Remember
6 we talked about that in the tutorial. So it sends a NACK
7 saying it didn't receive the packet. And so there's another
8 transmission. This is step 303 in the specification.

9 And here it says, a state on the specific field. You
10 notice it says the same words up above, "a state on a specific
11 field." Careful to use those words. A state on the specific
12 field indicates RV1. Then it goes -- then it goes back and
13 there's an acknowledgment that they received it.

14 And then we have a next transmission of a new packet. And
15 so it goes back to the initial communication. And then, again,
16 it uses the RV value. But the state on the specific field
17 being transmitted is just the payload size.

18 And there's other examples, if you walk through them, that
19 have more back and forth.

20 So, for example, if there's more -- if there's a circle of
21 more NACKs, it would be different RV codes, like we talked
22 about, but it wouldn't have the payload size in it. It would
23 just be the RV. But then when you have a new -- when it says
24 accepted and you have a new one coming, then it goes back to
25 payload size. It alternates back and forth but never sends the

1 RV value and the payload size in the specific field that
2 they're talking about. And that's why RV is not put on the
3 arrow.

4 All right. I want to talk really briefly about the chart
5 that counsel for plaintiffs showed Your Honor. This is their
6 infringement case, Your Honor. So they're trying to argue
7 claim construction off the -- that they say is the infringing
8 technology. This is from the 3GPP technical specification.
9 That's what it is. And they put it in their brief.

10 And what we need to see here that's important is, as you
11 read this, the states of the field in the common field are the
12 MCS index. It's called joint encoding.

13 It's completely different technology, where you take a
14 code and you perform a bunch of algorithms on it and you can
15 generate a bunch of different things. Called joint encoding.
16 And in this example it generates three pieces of information.

17 But what you see is -- let's just pretend it's not
18 doing -- doing it. Let's just pretend it's sending it on a
19 field. Let's pretend that this whole -- the rows are just one
20 field, which isn't true in actuality. But let's just pretend
21 it because that's what they're trying to say.

22 What do you see? Well, you do see that the payload,
23 TBX -- TBS is sent and the redundancy is sent. But look at
24 rows 1 through 28. What does the redundancy say? Says the
25 same thing over and over and over again. Well, that's the

1 problem that this patent is trying to address.

2 So you know-- and, indeed, the patent itself says that's
3 the problem. So in the background section of the patent
4 here -- and this is slide 15, column 13 through -- column 3,
5 lines 14 through 26, that is, in the prior art, when the packet
6 is transmitted initially and retransmitted, the control
7 signaling needs to indicate both the RV and the payload size.

8 And the RV indicated by the control signal in the case of
9 initially transmitting the packet and the payload size
10 indicating by the control signaling in the case of
11 retransmitting of the packet are information not required to be
12 indicated, which leads to a waste of physical resources.
13 That's the problem.

14 And what they've done is they have the default values, and
15 they only need to send one or the other. So if it's a new
16 communication, they send the payload size. And if they don't
17 receive it, they send only the RV versions because the payload
18 size is going to be the same.

19 And that's -- that's what they claim as an invention. So
20 the interpretation that plaintiffs want to make is that the
21 reason there's a dispute is they're saying that the redundancy
22 version is being sent together in the specific field with the
23 payload size information. And that's simply not correct.

24 And I have no problem with just relying on the plain words
25 of the claim. But it shouldn't be -- they shouldn't be allowed

1 to interpret it to remove the entire point of the patent.

2 **THE COURT:** All right.

3 **MR. VERHOEVEN:** Thank you, Your Honor.

4 **THE COURT:** Thank you.

5 Mr. Lewis, do you want to have one --

6 **MR. LEWIS:** I have two very quick points, Your Honor.

7 **THE COURT:** Okay.

8 **MR. LEWIS:** First of all, it's wrong that the base
9 station tells the UE a default value in separate signal as
10 counsel said. There's nowhere in the patent that says that.
11 There just isn't.

12 So the final thing I want to say is this: Counsel's
13 presentation would have been no different if the claim did not
14 have the term "dynamically" in it. If it just said indicative
15 of payload size or RV he could have given that same
16 presentation. And that's telling, Your Honor.

17 That's all I have.

18 **THE COURT:** All right. Thank you.

19 All right. Let's go on to term 2.

20 **MR. VERHOEVEN:** Do you want me to start first on that
21 one?

22 **THE COURT:** Anybody who is concerned about the
23 construction.

24 **MR. LEWIS:** Your Honor, we said we were fine with the
25 combination on '239, which is what you tentatively indicated.

1 **THE COURT:** All right.

2 Do remember that there are ten of these?

3 **MR. VERHOEVEN:** There are what?

4 **THE COURT:** There are ten terms that we're going
5 through.

6 **MR. VERHOEVEN:** Yes, I'll try to be faster.

7 On the '239, this is the patent, you'll remember from the
8 tutorial, where you have a big group that's a region k. And
9 then you have subgroups within the k that are -- you try to --
10 on the interfaces between the subgroups here, like subgroup 1
11 and 3, you try to have the sequences to have a low correlation.

12 And there's something on my screen but not on yours.

13 Okay. So the parties have reached agreement on -- there's
14 two issues here. The parties have reached agreement on the
15 first one which, is whether k needs to be a constant in the
16 claim. So there's no dispute about that.

17 So the only live dispute that's left is whether or not the
18 word "allocated" modifies "sequence group" or "a group
19 number k." So that's the live dispute.

20 So if you go to the claim language -- here it is in claim
21 6. This is slide 23. And this is where it appears in the
22 claim, "obtaining, by a cell or base station or a user
23 equipment, a group number k of a sequence group allocated by
24 the system."

25 And what the plaintiff wants to say is "allocated by the

1 system" modifies "a group number k."

2 And what we argue is "allocated by the system" modifies
3 "sequence group." And we contend, just by plain English, that
4 that's the proper way to interpret that claim.

5 When you start with the claim -- so looking just at the
6 claim, I'm going to pull up *Strunk and White*, I remember from
7 law school.

8 And, you know, it says, "Modifiers should come, if
9 possible, next to the words they modify." And what's the
10 modifier? "Allocated by the system."

11 **THE COURT:** I don't think anybody who has ever written
12 a patent paid attention to *Strunk and White*.

13 (Laughter)

14 **THE COURT:** But I may be wrong.

15 **MR. VERHOEVEN:** That's a good point, Your Honor.

16 But plain English, when you're modifying a noun, you --

17 **THE COURT:** I understand.

18 **MR. VERHOEVEN:** The modifier is -- you want to put the
19 modifier right next to the noun, not to a noun that's two back.

20 And so we argue that the -- just the plain English reading
21 of this is that "allocated by the system" is modifying or
22 restricting the noun "sequence group" and not "a group
23 number k."

24 And, you know, for example, you wouldn't need to change
25 the words of the claim for our interpretation. But the way

1 Huawei interprets it, basically to make it clear, you'd have to
2 rewrite the claim, the group number k of a sequence group. The
3 group number k allocated by the system would be the clear way
4 to say what they're saying. The clear way to say what we're
5 saying is what the claim says.

6 Now, there may be some ambiguity. They say there's
7 ambiguity. What do you do if there's ambiguity in the claim?
8 You look to the specification.

9 The specification, Your Honor, says "allocating" many,
10 many times. Maybe over 20 times it uses the word "allocated."
11 "allocating" or "allocated."

12 Not once in the specification does that word -- is that
13 word used to modify "a group number k." Every single time it's
14 modifying the sequence group.

15 So I'll show you. And there's a whole bunch of these.
16 I'm not going to read them all.

17 But this is slide 26, column 5, 46 through 51, "allocated
18 sequence group."

19 Column 52, 29 through 45, "the sequence groups are
20 allocated among the cells."

21 Column 5, 37 through 40, "the sequence groups are
22 allocated among the cells."

23 Column 5, 46 through 56, "the allocated sequence group."

24 Column 5, 60 through 66, "the system allocates sequence
25 groups."

1 It goes on, on slide 2. I'm not going to read them all --

2 **THE COURT:** Thank you.

3 (Laughter)

4 **MR. VERHOEVEN:** -- but there's a bunch of references
5 that are all consistent with that.

6 And then -- so I've got three slides worth of quotes. In
7 every one of those the word "allocated" or "allocating" is
8 modifying "sequence group." And not once in the claim is that
9 word "allocation," "allocated," "allocating" used to modify the
10 "group k."

11 So to the extent there's ambiguity in the claim itself,
12 the specification makes clear that the allocated -- the verb
13 "allocating" is modifying or restricting the phrase "sequence
14 group," not the prior noun "group k."

15 So that's basically our argument. The only thing I'll
16 say, in addition to that is, if you look at the papers with
17 Huawei's argument, the only thing they rely on is the claim
18 language. They refer to the specification without citation in
19 one sentence in their reply brief. But they don't. They
20 ignore the specification. And their argument is simply an
21 English language argument.

22 And they admit -- so on page 8 of their opening brief,
23 this is slide 29, opening brief at page 8, "Due to the nature
24 of the English language, it could be argued that 'allocated by
25 the system' modifies either 'a sequence group' or 'group

1 number k.'"

2 And in their reply brief, again at page 4, a grammatically
3 correct English sentence could theoretically do both, is what
4 they're saying. But their only support for their
5 interpretation is to point to the same phrase that they said
6 was ambiguous. That's their argument.

7 Our argument is we think it's clear. But if it is
8 ambiguous, the specification shows which of the two meanings it
9 should be.

10 Thank you, Your Honor.

11 **THE COURT:** Thank you.

12 **MR. LEWIS:** Your Honor, so we are relying on the claim
13 language, which is generally what we're supposed to do on claim
14 construction. But there's more claim language than counsel has
15 shown, that I have on the screen here.

16 The fact -- obviously not the whole claim, but I have the
17 part that's -- that's at issue here, "group number k of the
18 sequence group," but also the part a little bit later in the
19 claim that explains the k is the serial number of the sequence
20 group.

21 So what this is saying is that there's a relationship
22 between the group number k in the sequence group that is -- and
23 I have a little thing on my screen. Hopefully not on yours.

24 **THE COURT:** No.

25 **MR. LEWIS:** It's showing that there's a relationship

1 between what's being allocated by the system and the group
2 number k, because the k identifies the sequence group. And,
3 therefore, it is -- the k, that is, is what's coming from the
4 system. And the k is then used to identify the sequence group.

5 In a couple specific points in response to counsel's
6 points, first of all, on slide -- I think it was 24, he shows
7 *Strunk and White*. And while I agree with Your Honor that most
8 patent prosecutors don't pay a lot of attention to that book,
9 or any grammar book, it also says "if possible"; right.

10 And the language here has both the "of a system group" and
11 the "allocated by the system," both modifying "a group
12 number k." Well, it's not possible to have them both next to
13 the term. And that's why it is written the way it is.

14 Your Honor, unless you have any questions on this patent,
15 I have nothing further.

16 **THE COURT:** What do you do about those 30 references
17 of "allocated" that Mr. Verhoeven pointed out in the
18 specification?

19 **MR. LEWIS:** Oh, in the specification.

20 Your Honor, I don't think that those are inconsistent.
21 You know, I went through them quickly. And I was trying to
22 think about what I have said here, and so I didn't look at each
23 of them that he pointed to.

24 But the ones I remember, from having read this patent more
25 than a few times, track the claim language. And, you know,

1 some read almost exactly the same, or grammatically sentences
2 are different, obtained is in a different point than in the
3 claim. But they basically say the same thing.

4 The claim, in my recollection of the patent, does not
5 use -- does not have anything in it that's inconsistent with
6 our construction. I don't think it does because I think they
7 would have made a lot more than citing 30 things at you if they
8 had something that supported them.

9 I mean, when we had support for the last patent, I blew
10 out the one I wanted to talk about. I talked about it, and
11 said there's others too. I didn't throw others at you and not
12 get specific about any of them.

13 Without having a moment to look at them specifically,
14 that's all I have.

15 **THE COURT:** Thank you.

16 **MR. LEWIS:** Thank you, Your Honor.

17 **THE COURT:** All right. Let's go on to number 3.

18 **MR. VERHOEVEN:** I'll be really short on this one, Your
19 Honor.

20 **THE COURT:** Okay.

21 **MR. VERHOEVEN:** This is the '613 patent. And the
22 phrase at issue is "receiving, by a user equipment, a service
23 sent by the base station."

24 Actually using the other side's slides, Your Honor.
25 Should probably use mine.

1 But the issue is, what does "receiving a service" mean?

2 And can we switch it? Yeah, we got it.

3 And so let me get on the right one. I'll just go off the
4 screen.

5 Here it is, right there. That's the phrase in the long,
6 long claim.

7 I want to note one thing, Your Honor, that's really
8 important about this patent for today but also throughout the
9 case.

10 Look at the way this claim is written. And all the claims
11 are written like this. They're accusing a mobile phone of
12 infringement based on this claim.

13 The only thing that happens on the mobile phone on this
14 claim are the things in yellow. Receiving a service sent by a
15 base station and receiving position information of the specific
16 radio frames, et cetera.

17 All the stuff about how it's organized and how it's --
18 what the radio frames are and R number of subframes, all that
19 stuff is not done by the -- is not -- in the claim itself, is
20 not done by the handset.

21 So it's like you have a -- you have cable. And you
22 subscribe to -- you don't subscribe to HBO because it's too
23 expensive, but you subscribe to the regular stuff. You still
24 receive all of the HBO information. But do you receive the
25 service? No.

1 You know, and would it be fair to say you infringe because
2 somebody spams you with an -- offering an infringing service
3 and you don't use it? That's what we have with this patent.

4 For the vast majority of the accused devices, they simply
5 don't use the service. And that's the reason we have, I admit,
6 kind of weird proposed claim construction. We're trying to get
7 at that notion.

8 And I kind of think the plain language should be fine for
9 that. What I want to make clear -- and I've read the other
10 side's briefs, and I think they have the same interpretation I
11 do, so maybe we're fine on this.

12 But what I want to make clear is, the codes around the
13 content, for example, the timing codes, the codes around the
14 package of the content, those are not the service. The service
15 is the content. We all know and we talk about TV, what's the
16 content. It's the actual video that you see.

17 And that's the only thing I want to make clear here. And
18 if you look at -- this is slide 8. I'm looking at their
19 briefs. And I hope there's no dispute on this, because in
20 their opening brief, at page 12, 7 through 9, they refer to the
21 position information, the timing information. And they say
22 this position information is about the service, not the service
23 itself.

24 That's exactly what we want the understanding to be. And
25 in their reply brief at 8, lines 22 through 26, the language

1 that it does quote regarding the UE obtaining service data,
2 suggested the term receiving a service encompassed receiving
3 data about the service such as information related to the
4 service.

5 And they say that's inappropriate. We agree. What we
6 want to make clear is the information that's not in the content
7 cannot be included in the service. So if you get pinged and
8 there's a code, and some low level on the computer opens a
9 package, that not receiving the service. Receiving the service
10 is watching the video, or whatever the content is that's being
11 delivered, is actually implemented.

12 And if that's clear, we have agreement on that, then we
13 can just go with plain, ordinary meaning.

14 **THE COURT:** Okay.

15 **MR. McBRIDE:** Your Honor, unfortunately, we don't have
16 agreement on that. But I think I can be pretty brief.

17 You know, I think maybe the most important thing is
18 perhaps counsel misread the argument that they put up in slide
19 8.

20 Your Honor, just to jump into this, slide 28, the
21 patent -- the specification of the patent explains the service
22 system divided into these two categories, unicast and
23 multimedia broadcast multicast services.

24 And it says that the unicast service refers to point to
25 point, where you have one person, and the other is one -- one

1 sender sending to multiple people. There's no limitation on
2 what that data is.

3 Now, we agree, and as we said in our brief, we're not
4 saying that the position information is the service. But
5 Samsung's trying to -- the expression my grandfather used was,
6 give you a pig in a poke.

7 They're trying to say, well, it's not an index, it's not a
8 representation. It has to be the value.

9 I don't know what any of that means. And I think, as
10 counsel suggested, there is some weirdness here. They can't
11 tell us. It can't be a code, it can't be a something. I don't
12 know what that is.

13 The patent is pretty clear that a service is data sent
14 from one -- from one sender to a receiver or multiple
15 receivers. And there's just no basis to limit a service to the
16 value of a service or to the content of say, you know, HBO.
17 There's not basis in the spec or in the claims for that.

18 **THE COURT:** But you don't walk away from the
19 statements that are made in your briefs?

20 **MR. McBRIDE:** No, no. But I do think -- we agree that
21 position information is not -- is not the -- is not the
22 service.

23 But the second point that counsel put on their slide 8, we
24 were saying that -- that the specification actually says that
25 there could be service information and that that would be part

1 of the service. It's not just, say, you know, the pictures
2 that make up the Super Bowl. It's a lot of stuff that makes up
3 the service.

4 That's all, Your Honor.

5 **THE COURT:** All right. Thank you.

6 All right. Number 4.

7 **MR. VERHOEVEN:** Appear to be on the losing side of all
8 these tentative rulings, Your Honor.

9 **THE COURT:** I think the poles shift as you get further
10 to the west.

11 **MR. VERHOEVEN:** Let's see, which one are we on?

12 All right. So, Your Honor's, ruling on this phrase, "a
13 first P-TMSI in an access message" is ordinary meaning, on this
14 one I think we do need clarification and a construction
15 because -- well, I'll explain why.

16 First of all, as Your Honor will recall from the tutorial,
17 this is talking about moving from an LTE network to a 3G
18 network. And so the user sends the signal; goes to the core
19 network gateway; brings back -- this is LTE, so it brings back
20 an MME ID.

21 And then the user goes to the legacy network, which uses
22 different codes, and sends up its address package. And base
23 station opens it up, gets a P-TMSI, which is familiar to the 3G
24 station. And then it opens that, and these instructions are
25 routed back to the legacy or the LTE MME1. That, in a

1 nutshell, is what the patent is saying is new.

2 So here's the phrase in context of the claim. And the
3 claim talks about a receiver obtains a temporary I.D. And then
4 the MME information, which is the important information for the
5 temporary ID, is an MME information adding module. And it adds
6 the MME information to the temporary ID.

7 And the temporary ID is this P-TMSI. And remember from
8 the tutorial we showed the code going into the larger P-TMSI
9 thing. That's what that is. And it says it's in an access
10 message.

11 So here are the issues with this. First, do the claims
12 and specification distinguish between a first and second TSMI?
13 I think it's undisputed the answer is yes.

14 Second question, do the claims in the specification
15 identify a location for the first TSMI? And that's what we
16 have in our briefs. But I think we can state it more
17 specifically. It's, do the claims and specification show that
18 it can't be in the NAS? And I'll get to that, the NAS.

19 And the dispute here, to be really specific, is that the
20 plaintiff says that this first P-TMSI -- not the second, but
21 first one, and you can only have only one, that that can be in
22 the NAS.

23 So let's go to the -- explain what we're talking about.
24 So in the specification, Figure 9, this is an access message
25 called an RRC message. So it contains all the stuff on the

1 inside. And this is undisputed.

2 The box around -- the red box there is, as described, the
3 P-TMSI message. That's the first P-TMSI message.

4 Then we have this NAS message. That's a different part of
5 the access message. It's different codes, different part.

6 And within that, the patent says you can have a second
7 TSMI, right there. And you can see it indicated in there, the
8 actual specification. So that's what we're talking about.

9 So the dispute is, can the first TSMI, the one that is
10 shown in red, be the only P-TMSI and be located in the NAS
11 message? And we think the answer is no, it can't. And let me
12 explain why.

13 The specification -- this is column 11, line 17 through
14 33 -- provides some guidance on this. It says the P-TMSI
15 information is placed in the access message, RRC message. And
16 then it says, in addition, the NAS message in the access
17 message carries P-TMSI information. This is the first and
18 second P-TMSIs. That is two P-TMSIs. The -- then it goes on
19 to say what the two P-TMSIs do.

20 So with respect to the first P-TMSI, it says a RAN node
21 such as -- and it lists a couple of base station nodes -- finds
22 the corresponding SGSN -- and that's the core gateway; you have
23 those different core gateways -- according to the NRI. And
24 that's information in the P-TMSI.

25 So the RAN node base station finds the corresponding --

1 the SGSN that corresponds to the NRI information which is in
2 the first P-TMSI. It uses that -- it opens up the package and
3 uses that information in the first P-TMSI in order to route the
4 communication to the appropriate SGSN. That's what that's
5 saying.

6 Now, let's look at what the second P-TMSI does. The RAN
7 node, such as just the base station, does not parse the P-TMSI
8 information in the NAS message. It does not open the NAS
9 message. That's what it means.

10 So the -- if the P-TMSI is in the NAS message, the
11 invention won't work. It has to be a P-TMSI that can be
12 opened.

13 And why do we have a NAS message, and why would it have a
14 P-TMSI in it? Well, I think I have -- here you go. Slide 17
15 answers that question. And this is column 10, line 65 through
16 67.

17 So the address message goes up. It's at the base station.
18 And it says, if no corresponding SGSN exists -- so it's opened
19 the envelope, it's pulled out the NRI from the P-TMSI the
20 identification, and it doesn't match anything. So it says, if
21 no corresponding SGSN exists, the old network selects a new
22 SGSN. Just picks one. And then the UE sends the P-TMSI
23 information carried in the NAS message to the new SGSN. And
24 then that SGSN opens the NAS message.

25 So the NAS message is there if the first P-TMSI doesn't

1 work. So it's a backup. But the first base station doesn't
2 open that ever. It's -- it gets routed to a different one.

3 And so this brings me back to the claim. So now I'm back
4 on the claim, page 14. The phrase is "a first P-TMSI in an
5 access message." And our argument, Your Honor, is that can't
6 be located in the NAS portion of that access message. If it
7 is, it would render this invention inoperable.

8 There's no description of how you would do this invention
9 in a specification if the P-TMSI was in the NAS message. And
10 you can't interpret claims so that they would be inoperable.
11 Or you shouldn't. That would render the patent invalid, if it
12 was inoperable.

13 So what we're saying is that claim 12, standing alone,
14 given the specification, that that first P-TMSI -- there can be
15 other P-TMSIs in claim 12. It's a comprising claim. But the
16 first one cannot be in the NAS message. It has to be somewhere
17 else in that access message.

18 And, you know, the words you use to say that, we're
19 flexible. You know, we tried to come up with the words to say
20 that. It's kind of a complicated concept. But that's how this
21 should be interpreted, we argue.

22 Now, the defendants will argue that the dependent claims
23 show that the -- well, first, they argue that it doesn't say it
24 needs to be -- it can't be in the NAS. So we're limiting it.
25 And I've explained why I think that it's appropriate.

1 Another argument they make is what they call claim
2 differentiation. And they cite to a couple of dependent
3 claims. And let's just go through those.

4 First, let's start with claim 17. It adds "wherein the
5 MME information adding module is further configured to add the
6 MME information to a second P-TMSI and a routing area identity
7 of the NAS message."

8 So this one is claiming the second P-TMSI in the NAS
9 message. And they're saying, well, because it's saying that,
10 claim 12 has to encompass that.

11 And what we're saying is, no, claim 12 by itself needs to
12 be interpreted in an operable manner. And it's a comprising
13 claim. So you could have a whole bunch of additional
14 restrictions on it because it's a comprising claim.

15 So you can add -- so what 17 is doing is, it's actually
16 narrowing claim 12 by requiring a second TSMI that's in the NAS
17 message. You could have a second TSMI somewhere else under
18 claim 12, but the first TSMI has to be not in the NAS.

19 So that doesn't show that claim 12 needs to be interpreted
20 such that the first TSMI could be in the NAS message. It
21 doesn't. And the same thing with dependent claim 16.

22 I have a bunch more slides, but I don't have a bunch more
23 time. So unless Your Honor has any questions, I'll sit down.

24 **THE COURT:** Okay. Thank you.

25 **MR. McBRIDE:** Your Honor, I think Samsung is trying to

1 make this far more complicated than it needs to be. I think
2 it's just one legal error after another.

3 They're trying to limit the claim to one embodiment
4 disclosed in the specification. They're trying to import
5 limitations from dependent claims back up into independent
6 claims. And I think all you really need to do is -- I'm going
7 to skip through a bunch of stuff here -- is to look at the
8 claim.

9 Claims 1 and 12 are the asserted independent claims. And
10 they say that you need to add -- the UE needs to add MME
11 information to a first P-TMSI.

12 The case law is clear. First, second, those don't refer
13 to locations. They're just used to distinguish between
14 different things.

15 So we're not saying that the first is the second. We're
16 saying that there is a first, and there may be dependent claims
17 that require a second. But for claim 12, the claim that's
18 asserted, all you need is one P-TSMI. If we look in an access
19 message and we find a P-TMSI, then, you know, you've satisfied
20 that element of the claim.

21 I show here on slide 38 there's an embodiment that talks
22 about how you can have one P-TMSI in an access message. The
23 figure that they're enamored of, Figure 9, shows two P-TMSIs.

24 Now I'm on slide 40, Your Honor. You can have a lot of
25 P-TMSIs. They can be in any different part of the message, but

1 I've highlighted in orange here. Any one of these things
2 highlighted in orange could be considered a first P-TMSI and
3 would satisfy -- satisfy this element of claim 12 that we're
4 discussing.

5 Let me just flip through here. As I said, Your Honor, I
6 think Samsung is making a number of errors. And I think -- and
7 I think they may even have the arguments backwards a little.

8 We're not arguing that the dependent claims or claim
9 differentiation means that because the second P-TMSI can be in
10 a NAS, the first P-TMSI must also be able to be in a NAS. I
11 think that was actually an argument they made that we're
12 rejecting.

13 Our point is simply, the claim says you can have a first
14 P-TMSI in an access message. That P-TMSI can be anywhere.

15 They had some arguments about how maybe this would render
16 the invention inoperable. That's simply not the case, Your
17 Honor. I mean, the best way to see that is to look at our
18 infringement contentions where we lay out a theory just along
19 these lines. I won't get into that. But I think that's --
20 that's all I have.

21 **THE COURT:** Great. Thank you.

22 **MR. VERHOEVEN:** Okay. Last one for the defense for
23 Huawei's patents is the -- here we go -- cell reselection.
24 This is the dedicated priority list, Your Honor.

25 **THE COURT:** Yes.

1 **MR. VERHOEVEN:** Can we go to slide 7, please.

2 So let me start by saying that the Court has proposed a
3 construction for the phrase "an isolation dedicated priority
4 list."

5 We're okay with that phrase "an isolation" as long as
6 there's no dispute as that when you plug it into all the
7 dependent claims there's a requirement that that priority list
8 includes at least two radio access technologies.

9 So if you look at claim 1, Your Honor, you'll see
10 there's -- there's the phrase to be construed. And then you
11 add -- color code this. You can see they're referring to two
12 different radio access technologies.

13 And what our argument is, is that "dedicated priority
14 list" in this claim, because of all these put together, must
15 have at least two radio access technologies.

16 So if you take the words "dedicated priority list" out in
17 isolation, and don't put it in the claim, we agree with Your
18 Honor's construction. But if you plug it into the claim and
19 read it in the context of the claim, the claim as a whole will
20 require that that priority list has at least two radio access
21 technologies.

22 So it talks about a dedicated priority list, then the
23 dedicated priority list from a long-term evolution LTE system.
24 The dedicated priority list, that's the same list, that
25 includes the nonLTE system.

1 So one priority list has two radio access technologies in
2 it. And that's -- as long as that's clear and there's no
3 dispute about that we're fine with Your Honor's proposed
4 construction.

5 But if they're going to say that Your Honor's
6 interpretation makes it such that this dedicated priority list
7 could not even include -- or could exist with just one radio
8 access technology, then we have a dispute about the meanings of
9 the claim.

10 **THE COURT:** All right.

11 **MS. YANG:** Good morning, Your Honor.

12 **THE COURT:** Good morning.

13 **MS. YANG:** I think where we should begin is where
14 counsel just left off, where I think counsel is misreading the
15 claim language.

16 If we can turn to the claim language, it does not state
17 anywhere that the dedicated priority list itself must have at
18 least two RATs, an LTE and a nonLTE.

19 If you look at the claim, what it's talking about is
20 you're saying the UE is in an LTE system. So that's the
21 context of the claim, sitting in an LTE system. It gets a
22 dedicated priority list. And then if it happens to go to a
23 nonLTE system it takes that list with it, as we discussed at
24 the tech tutorial last week.

25 So the concept of the dedicated priority list is separate

1 from this concept of where you would use it and how you would
2 use it.

3 And so I think there's just maybe a fundamental misreading
4 of the claims and what a dedicated priority list is as opposed
5 to what is this, you know, LTE versus nonLTE context that it's
6 used in these claims.

7 So going to the Court's tentative construction, starting
8 there, Huawei's position continues to be that no construction
9 is necessary. But if the Court wishes to construe the claim,
10 we're okay with most of the proposed construction.

11 We agree that a priority list is a list for a specific
12 terminal. I don't think there's actually a dispute between the
13 parties on that.

14 And we agree with the Court. We think the Court is
15 correct that that dedicated priority list can include different
16 frequencies or it could have different radio access
17 technologies or whatever, but it's not limited to different
18 radio access technologies the way Samsung's proposed
19 construction would have.

20 And just as one example of, you know, why we agree, it's
21 this disclosure in the specification that discusses the
22 different priority levels. But I'm not going to belabor that
23 because we do agree with Your Honor.

24 Unless you have questions specifically related to that
25 portion of the construction, I'm just going to move on.

1 **THE COURT:** Go ahead.

2 **MS. YANG:** Okay. So, all right. The portion of the
3 proposed construction that we believe is not -- is not correct
4 and is not supported by the specification is this listed in
5 order of priority portion.

6 And so specifically -- let me get to the right slide.

7 So this is the specific limitation that Samsung has
8 proposed to read in. And, in fact, the specification does not
9 ever require that the priorities be listed in order of
10 priority.

11 What you have in the specification is over and over again
12 there are disclosures that say, well, the dedicated priority
13 list that's delivered may indicate a certain priority.

14 Here, the one I pulled up for example, is GERAN has
15 priority over UMTS, has priority over LTE. There's a number of
16 other cites. We've just listed them for reference. But they
17 all use this language of "may indicate" or "indicate" is the
18 priority.

19 So the patent is not saying that that GERAN over UMTS over
20 LTE is what the dedicated priority list actually looks like.
21 What it's saying is that the takeaway or the conclusion you
22 receive when you look at that dedicated priority list is you
23 understand, based on that, that this is the priority that is to
24 be followed, and so however it's actually implemented.

25 So it's -- you know, you could reach the same conclusion

1 in differently ways. And it's kind of like, just to get away
2 from, kind of, the -- the telecommunication context into
3 something that makes a little more sense, you know, say that
4 you've got a whole bunch of people, you've got -- they're in
5 some sort of race, right. Someone wins gold, bronze, silver.
6 But, you know, later on there's some list of the winners. And
7 they're just listed alphabetically.

8 So maybe the first person alphabetically actually won
9 bronze; the second person alphabetically actually won gold; the
10 third person alphabetically actually won silver. But when one
11 looks at that list, they understand that, in reality, the
12 person who won gold, you know, is number one, right, and the
13 person who won silver is number two, even if they're not listed
14 in that order.

15 And so coming back to this example it's a similar thing.
16 The dedicated priority list is not limited by the specification
17 to look a certain way.

18 The priorities don't have to be listed in any particular
19 order in the specification. It's just when you understand it,
20 when you look at it, then you understand what it means. And
21 that's what this "indicate what the priority is" or "may
22 indicate what the priority is" refers to.

23 And one other --

24 **THE COURT:** What does "dedicated" mean?

25 **MS. YANG:** So dedicated is the portion -- that was

1 where we were discussing the difference between, like, a
2 dedicated priority list and a public priority list.

3 So dedicated is where the priority list goes to a specific
4 user equipment or a specific mobile device or something. So
5 like, you know, if I'm -- if I'm a UE and you're a UE, we would
6 each get our own dedicated list.

7 **THE COURT:** Okay.

8 **MS. YANG:** And so going back to where I was before,
9 basically if you -- if you add this limitation of "listed in
10 order of priority" to the construction for this term, what you
11 end up is, you would end up reading out these disclosures that
12 just say that the priority is indicated.

13 And, in fact, this specification says, as Your Honor has
14 noted, that, a priority may refer to different things like
15 frequency or RATs. And it goes on to say that the priority
16 list may include the priority levels.

17 And this is just kind of a common sense argument also, but
18 if the priority list was already listed in order of priority,
19 then there would be no reason to have priority levels
20 associated with the frequencies or RATs. You would just read
21 the list and you would know what it is.

22 And so, finally, this is -- just a point on extrinsic
23 evidence that Samsung had listed as part of this claim
24 construction exercise. They pointed to a couple -- to some
25 3GPP documents, version 8.5.0 and earlier, so we've just pulled

1 that out.

2 And in that extrinsic evidence, as well, it's clear that
3 the priorities just need to be identified with an integer from
4 0 to 7. There's no requirement that it be listed in order from
5 0 to 7. And there's an earlier version that has that same
6 thing, just has to be identified by an integer from 0 to 7.

7 So Huawei's view is we would be fine with the list for the
8 specific terminal that includes different frequencies,
9 frequency bands or radio access technologies. We think that
10 listed in order of priority is actually contrary to the
11 specification and would end up reading out a number of
12 disclosures from the specification.

13 If Your Honor believes that it's important to have some
14 recognition of the priority order, we could work on language.
15 But, you know, I think we would be okay with something like
16 that the priority is identified or the priority order is
17 identified. You know, we're okay with that concept. We think
18 that is correct, that there's a concept of a priority that's
19 associated with the different items in the list, but just that
20 it's incorrect to require that they be listed in order of
21 priority.

22 **THE COURT:** Okay. Thank you.

23 **MR. VERHOEVEN:** Your Honor, I thought we might have
24 agreement. I wasn't sure, so I didn't present a full-blown
25 argument. Can I have just a brief response?

1 **THE COURT:** Yes, go ahead.

2 **MR. VERHOEVEN:** Thank you.

3 Can we go to slide 4.

4 Once again, the interpretation of putting that in the
5 claim, even though the claim talks about the priority list --
6 every independent claim talks about the priority list having
7 these two different RATs, they're interpreting it as not
8 requiring two different radio access technologies. And that
9 reads out the invention.

10 So going back to the tutorial -- going back, these are
11 slides from the tutorial. The whole point of this invention is
12 you just tell reselection when the mobile device moves from one
13 radio access technology to another.

14 And the whole point of the invention is that you get a
15 dedicated -- the innovation is you get a dedicated listing that
16 prioritizes the different radio access technologies, so that it
17 goes to the phone, the phone has instructions, if it goes to a
18 different radio access technology, on what it should do.

19 And so the person goes to a different radio access
20 technology. This is the GERAN system. That's a TDMA-based
21 system. And the person tries to send a signal out, and they
22 compare that to their priority list. And they compare it --
23 then you remember they -- so they go to GERAN first because
24 GERAN is on the priority list first.

25 So that's why they pick GERAN. Then they do that thing we

1 talked about in the tutorial to compare the signal requirements
2 are met. And they're not.

3 So then what does the phone do? It goes to the next radio
4 access technology on its priority list and does the same thing.
5 Measures the signal to see if the criteria is met. No? Then
6 it goes to the next radio access technology on its list.

7 So it's an iterative process where the cell phone has a --
8 has instructions to see -- to -- you know. And so the most
9 likely one they put first. The second most likely they put
10 second. And the phone just pings until it gets the right one.
11 And that's the whole point of the invention.

12 So to construe the claim as not requiring more than one
13 radio access technology in the radio access technology list or
14 the dedicated priority list would be to destroy what they're
15 claiming as their invention.

16 So we've got to take a step back and look at the big
17 picture here. I already -- go to slide 10.

18 I already made my argument based on this, but just to
19 refresh, claim construction you look at the text of the claims
20 first. Every independent claim refers to two different radio
21 access technologies and one dedicated priority list.

22 **THE COURT:** You did make this argument.

23 **MR. VERHOEVEN:** Yeah.

24 And then, really briefly, every embodiment in the
25 specification, Your Honor, every single one -- and I've got

1 them on the screen, talks about a priority list of different
2 radio access technologies.

3 And they put up one that says the word "may," but there's
4 a whole bunch of them that don't say the word "may." And you
5 can see there's more here.

6 And, as Your Honor knows, if a patent repeatedly and
7 consistently characterizes a claim a particular way in the
8 specification, it's proper to construe that claim in accordance
9 with that description.

10 And I think that's all I have, Your Honor.

11 **THE COURT:** All right. Thank you.

12 Okay. We're going to go on to the Samsung patents.
13 Before we do that, I think we'll take a 5- to 10-minute break.
14 Whenever the court reporter is ready to go, we'll be going
15 again.

16 (Recess taken from 9:59 to 10:06 a.m.)

17 **THE COURT:** All right. So now we're into Samsung's
18 patents. And let's go to the first one or the sixth one,
19 whichever you want to call it.

20 **MR. LEWIS:** Your Honor, we'll start with the '130.

21 **THE COURT:** Okay.

22 **MR. LEWIS:** Just really fast.

23 We have been talking to Samsung. I think fundamentally
24 the parties are in agreement what this means. A middle symbol
25 is sort of meaningless when you have an odd number of symbols.

1 That's easy. The issue was, well, what if there's an even? I
2 think the parties agree that an even number of symbols has a
3 middle.

4 There's been a problem with Samsung actually trying to
5 agree to language. We did some negotiating. We proposed
6 what's on this slide to just say both slots with an odd or even
7 number of symbols have a middle symbol in the slot.

8 Samsung wanted to put in some examples. They put in some
9 examples that I believe track their infringement case. We
10 said, well, we prefer no examples, and we'd like this. And
11 they said, well, we want examples. And I said, well, fine,
12 let's put in the examples from a piece of prior art that we
13 like, which is why we want this construction too. They said,
14 oh, no, no, we only want ours. And, therefore, we had no
15 agreement.

16 So generally, you know, we think middle symbol in the slot
17 really -- you know, the parties -- neither party is going to be
18 able to run away from that because of the position we've taken
19 in the briefs, that an even number has a middle.

20 The issue I'm concerned about is the jury. Because if we
21 don't give them any construction and we just say no
22 construction, what are they going to do on their own?

23 I put four children on this slide. I have four children.
24 I'm not sure which one of mine is green. But the question is,
25 with four children do I have a middle child?

1 And I picture that juror hearing all the testimony about a
2 middle thinking, you know, an even number doesn't have a
3 middle, four children, there's no middle child, and deciding
4 that our -- you know, that our invalidity case didn't show this
5 piece of art with an even number of symbols was the same as the
6 claim.

7 And so what we would like is a clarification for the jury
8 so that that juror understands what everybody, I think, agrees,
9 that even when you have an even number you have a middle. And
10 that's what we ask Your Honor to do.

11 **THE COURT:** Okay.

12 **MR. WHITEHURST:** Your Honor, I'm not -- Alan
13 Whitehurst for Samsung.

14 I'm not going to spend a lot of time on this claim term
15 either. We have no objection to the Court's tentative ruling.
16 I think this claim term is a perfect example of you just know
17 it when you see it.

18 As Mr. Lewis mentioned, we did try to reach a compromise.
19 And there's more to the story than what he told you, but the
20 long and short of it is it's harder than you think to come up
21 with a construction. And, as we said in our brief time and
22 time again, you can't do any better than the claim language
23 itself.

24 Same way in my family, except I have three. We have a
25 middle child. But when they pile into the car nobody wants the

1 middle seat.

2 We use the analogy of airline seats; there's more than one
3 middle seat. But people know what a middle seat is. Same
4 thing for at a movie theater.

5 And that's why we agree with your tentative ruling and
6 don't believe any construction is necessary. It's just one of
7 those terms that you know it when you see it.

8 **THE COURT:** All right. On to number two.

9 **MR. WHITEHURST:** I believe I can stay at the podium
10 because I will be addressing that term next.

11 And if we could please put up slide 40. The problem that
12 we have with the Court's tentative ruling for the '726 patent
13 is, it's not reflecting the ordinary meaning of the claim
14 terms.

15 When you look at the claim language on the left, when you
16 look at what it says, it's talking about allocating an ID using
17 these three variables.

18 There is no way to get to Huawei's construction from the
19 ordinary meaning without reading in limitations from the
20 specification. And we believe that's wrong here for several
21 reasons.

22 If we go to the next slide, you'll see that the Federal
23 Circuit has told us time and time again that you don't read in
24 limitations from the specification unless one of two things
25 occurs: lexicography or disavowal.

1 And these are high bars. The federal Circuit says you
2 don't depart from the ordinary meaning unless it is clear,
3 unmistakable from the patent that they intended to depart from
4 the ordinary meaning for something else. And that just doesn't
5 happen in the '726 patent. In fact, it's the opposite.

6 When we look at the '726 patent, we're going to see that
7 they say Equation 3 is an example. You don't have to use
8 Equation 3.

9 And that's why we have dependent claims, like claim 4,
10 that are directed to Equation 3, or something like it.

11 **THE COURT:** So are there other examples that actually
12 could be used to calculate?

13 **MR. WHITEHURST:** If we go to the next slide, yes.

14 I know that there's a lot in Huawei's briefs about
15 disparaging the other embodiments. We're not looking at
16 embodiments 1, 3 or 4.

17 But when you look at embodiment 2, it's broader than just
18 Equation 3. It's talking about Equation 2. It says you can
19 use Equation 2, a function of i , n , and t , to calculate this
20 ID. It's not until you get later in embodiment 2 that you get
21 to Equation 3.

22 And as I explained during the tutorial, I mean, there are
23 other ways you could do it with the ceiling function, the floor
24 functions. And these would have been understood by one skilled
25 in the art.

1 But when you tell those skilled in the art, calculate it
2 using i , n , and t , that was the invention. You are calculating
3 it using i , n , and t . Nothing more needed to be said.

4 Now, when patents are written for techies you can provide
5 additional examples. And that's exactly what occurred in
6 embodiment 2.

7 They started out embodiment 2 saying calculate the ID
8 using i , n , and t . That was it. They didn't need to say
9 anything more. That's what you see in equation 2.

10 But they went on. They gave those skilled in the art
11 additional knowledge. And they gave them an additional
12 example, which is the Equation 3.

13 I want to dig into the specification because I really do
14 think it's key to this question whether it's proper to take the
15 ordinary meaning, forget about the ordinary meaning and read in
16 limitations.

17 If we can go to the next slide, please.

18 You'll see that they say Equation 2 calculates an ID. One
19 reading this patent is put on notice that their invention was
20 calculating the ID using i , n , and t . That's it. You don't
21 have to go beyond that, but they did.

22 But just because they added additional information to the
23 patent, because they educated those skilled in the art to
24 provide an additional example, doesn't mean they should pay a
25 price now that they lose the benefit of their original

1 invention, which was Equation 2, which was calculating use i,
2 n, and t.

3 And you can see here on the highlighted language, in
4 yellow, that this was their invention. They're not saying, oh,
5 here's Equation 2, but we're going to get to the calculation
6 part later. They say the exact opposite. They say Equation 2
7 is doing the calculating.

8 Now, if we go to the next screen, this gets back to the
9 Federal Circuit case law that I previously mentioned.

10 Did this patent cross that bar, that high bar that they
11 acted as a lexicographer or disavowal? You will see patents
12 where they say, "You shall use Equation 3." That is not this
13 case.

14 If you look here, not only do they not cross over the bar
15 but they went the exact opposite direction. They've got
16 language here that says, for example, "can be."

17 And, yes, they provided additional information. But now
18 you're punishing the inventors for providing additional
19 information and taking away their original invention, which was
20 the i, n, and t.

21 Now, if we go to the next slide, I mean, this is the
22 point. When you put it side-by-side, the claims that we're
23 looking at, claim 1 -- and I forget the other claim number, but
24 when we look at the independent claims, they're directed to
25 Equation 2.

1 Yes, the patent has additional dependent claims that are
2 directed to Equation 3, but they're just additional proof that
3 Equation 3 should not be read into the broader independent
4 claims.

5 If we can go to the next slide, please.

6 Now, in their briefs Huawei does rely on undisclosed
7 extrinsic evidence. And, as you know, we object to that
8 evidence because it was not previously disclosed to us. And we
9 believe it was improperly used and should be ignored.

10 But if you look at the extrinsic evidence that they're
11 relying on, their expert is saying that only Equation 3
12 calculates an ID.

13 Well, this flies in the face of the patent that we just
14 looked at. They said Equation 2 calculates the ID. And that's
15 what you're doing. You're using i , n , and t to calculate the
16 ID.

17 And if we go to the next screen, this is consistent with
18 what the patent says. It says Equation 2 calculates an ID.

19 And if we look at the ordinary meaning, which we're
20 supposed to preserve in the claim, it's saying that
21 calculate -- if we can go to the next slide, please -- is to
22 determine by mathematical process.

23 And that's what the claim was directed to, to determine by
24 a mathematical process the HARQ ID using i , n , and t .

25 They provide an additional example, but their invention,

1 what we see in the independent claim, is broader.

2 I mean, we see this all the time with a genus and a
3 species. You have the broader genus in the independent claim
4 which is the broader concept of the calculating the ID using
5 these three variables. And then we see more of the specifics
6 in the dependent claim.

7 Now I want to turn to a slightly different issue, but it's
8 further proof of why Huawei's claim construction is wrong. And
9 I believe we should now be on slide -- I have one additional
10 slide I want to provide the Court. This is on slide 49.

11 We disagree that Equation 3 is the only embodiment. As
12 I've just said, we believe Equation 2 is the broader
13 embodiment. Equation 3 is an additional example.

14 But even if Huawei was correct that Equation 3 was the
15 only embodiment, the Federal Circuit has still said, even if
16 Equation 3 is the only embodiment, you still don't import that
17 limitation into the claims unless there was clear disavowal and
18 the patent says that they are departing from the ordinary
19 meaning.

20 In fact, I heard Huawei's counsel earlier this morning
21 argue for the '166 patent that even if it's the only
22 embodiment, you don't drag it into the claims. And that would
23 apply here for the '726 patent.

24 Now, if we turn to slide 50, I want to go through the
25 dependent claims to just show additional reasons why Huawei's

1 construction is wrong.

2 Their construction not only renders the dependent claim
3 superfluous, but it even goes farther. It reaches this bizarre
4 result where the independent claim would be narrower than the
5 dependent claim.

6 And hopefully you will bear with me. I'll try to go
7 through this quickly. It does get a little complicated, but I
8 want to show how this all works.

9 If we could go to slide 51, please.

10 You'll see on the left the independent claim. You'll see
11 on the right the dependent claim. Highlighted on the left is
12 the claim language -- part of the claim language at issue,
13 "calculating a HARQ process ID identifier."

14 And this is the limitation that Huawei wants to import
15 into the claim. They want to disregard the ordinary meaning
16 and import this claim limitation in.

17 Well, if you see, they are actually importing Equation 3
18 using the MOD function, which we discussed during the tutorial,
19 and the ceiling function.

20 Well, if you look at the dependent claim, you'll see that
21 there's "s modulo n." That's the same thing as $\text{MOD}[s,n]$.

22 So these are limitations that are already in the dependent
23 claim. If Samsung had intended for these limitations to be in
24 the independent claim, they certainly could have included them.

25 And then you see that they're importing this limitation,

1 s ceiling[t/i].

2 Well, when you look at the dependent claim, it also
3 mentions S. But it's silent about whether you use the ceiling
4 or the floor, rounding up some other way to get to this whole
5 number, this integer S.

6 But if we go to the next slide, you'll see that the
7 ceiling function is not what's important.

8 When you look at dependent claim 4, you could use ceiling,
9 you could use the floor, you could round up. The whole point
10 is that you're getting this whole number integer S. And that's
11 why dependent claim 4 is silent about whether you use the
12 ceiling function or not.

13 If we could go to the next slide, slide 53. If you go
14 back to the dependent claim 4, you'll see exactly what I'm
15 talking about here. S is an integer derived from T divided by
16 I. But the claim is silent whether you use the ceiling
17 function, the floor function or something else. It just says
18 that you're getting this integer S.

19 So to bring this point full circle, if we go to the next
20 slide, you'll see that if Huawei's construction is inserted
21 into claim 1, it's specifying getting this integer S using the
22 ceiling function while the dependent claim covers both the
23 ceiling and the floor functions. The independent claim would
24 be narrower than the dependent claim.

25 So if we go to my final slide, you'll see here Huawei's

1 construction violates the doctrine of claim differentiation on
2 two grounds.

3 Not only is it importing limitations from the dependent
4 claim, but it's making the independent claim narrower than the
5 dependent claim. And that flies in the face of the cannons of
6 claim construction where the independent claims are supposed to
7 be broader.

8 **THE COURT:** Thank you.

9 **MR. WHITEHURST:** Thank you.

10 **MR. BETTINGER:** Thank you, Your Honor.

11 Can we go to slide 71, please, of Huawei's presentation.

12 This is Equation 2, that counsel was referring to. That's
13 not an equation; that's a function.

14 As you can see at the top there, we've highlighted in
15 yellow, F1 has three variables; "i" which is interval, "n"
16 which is the number of persistent resources, and "t" which is
17 time.

18 Doesn't tell you what to do with those variables. Doesn't
19 give you equation. It's the equivalent of X, Y and Z.

20 If you want a calculation, you need to know, what do I do
21 with those variables? Do I multiply X times Y plus Z? Do I
22 divide? What do I do?

23 That's what Equation 3 does. It takes those three
24 variables and tells you, here's how you do the calculation.

25 And that's why we focused on Equation 3, because that is

1 the only equation what -- this function here, identified in 2,
2 doesn't give you anything. That's why you need Equation 3, to
3 say, hey, great, you've told me use these three variables.
4 What do I do with them? And so there's that equation that's
5 set out, $\text{MOD}[s,n]$.

6 And if we could go to slide 77, please.

7 Important to note in the patent, Your Honor, is that
8 $\text{MOD}[s,n]$ is a calculation for a HARQ process index. It's not
9 the identifier itself. It's the index.

10 So modulus is the remainder of. So if you put S over N,
11 divide it, and whatever your remainder is that's what a
12 $\text{MOD}[s,n]$ would be. And that gives you an index. The patent
13 goes on to explain, you use that index to then identify or
14 relate to an HARQ ID itself.

15 So the index is a critical part. But as the patent goes
16 on to explain, at slide -- if you could go to slide 80, please,
17 of our presentation, the UE calculates a HARQ process index
18 using Equation 3 to be applied to a HARQ packet using
19 Equation 3, and then checks that process identifier indicated
20 by the index.

21 So there's another step involved. After you've calculated
22 the index with Equation 3, you then have to relate it back to
23 the HARQ ID.

24 And that's what Equation 3 explains. Equation 2 doesn't.
25 It just identifies those variables. That's the -- that is the

1 equation that's in the patent. And that's the one Your Honor
2 has identified in the tentative.

3 If we could go to slide 82. And the patent, at column 9,
4 4 through 10, and then again at 19 through 30, explains how
5 once you've calculated that HARQ index using Equation 3, how
6 you then relate it to the HARQ identifier. And that's
7 explained. So that's part of the process of calculating the
8 HARQ ID that's the subject of the claim construction.

9 Why do I mention that? Because when you get to claim 4,
10 which counsel referred to, it's not asserted in this case. And
11 there's a reason claim 4 is not asserted: because they
12 misclaimed it.

13 If we could go to slide 83.

14 It says, a HARQ process ID equals $s \text{ modulo } n$. But we know
15 that $s \text{ modulo } n$ would be the same as the remainder of s over n .
16 And we know from Equation 3 that that simply gives you an
17 index. It does not provide you with the entire HARQ process
18 ID. It only gives you that index.

19 So the reason this claim has not been asserted is it was
20 misclaimed. That only provides you with a HARQ process
21 identifier.

22 Equation 3, that Your Honor has identified correctly,
23 says, hey, look, this is the equation for the identifier, the
24 index, and then you relate it back to an identifier.

25 And so with that, we believe that you're right, that is

1 the only equation that's identified in the patent for
2 calculating the HARQ process ID is Equation 3.

3 **THE COURT:** All right.

4 **MR. BETTINGER:** Thank you, Your Honor.

5 **THE COURT:** Thank you.

6 **MR. WHITEHURST:** If I may make one final point on
7 this.

8 **THE COURT:** Go ahead, Mr. Whitehurst.

9 **MR. WHITEHURST:** If we could put slide 71 back up,
10 please.

11 We're getting into semantics here about whether Equation 2
12 calculates. I mean, under the definition that we just saw,
13 this is calculating the HARQ process identifier based on i , n ,
14 and t .

15 Now, the fact that they put a parentheses Equation 2,
16 you're punishing the inventors for coming up and saying that
17 this is how you get the HARQ process ID.

18 Their invention was getting the HARQ process ID using the
19 i , n , and t . That was their invention.

20 Now we're getting into this argument about calculating
21 semantics so that we can drag in an additional limitation from
22 Equation 3.

23 **THE COURT:** Well, how do you use it to calculate
24 anything?

25 **MR. WHITEHURST:** Well, I think we're jumping ahead of

1 the --

2 **THE COURT:** That may be right.

3 **MR. WHITEHURST:** We are.

4 What you're hearing here is an enablement argument in
5 disguise. But we don't use enablement arguments that they may
6 raise down the road to guide claim construction.

7 I mean, if they are going to argue that one skilled in the
8 art reading this patent couldn't figure out how to get the HARQ
9 process from i, n, and t, that's a completely separate
10 question. That's something that we can decide down the road.

11 But just because you and I, standing here reading this
12 patent cold, may not know how to get the HARQ process from i,
13 n, and t is not the test. It's whether one skilled in the art,
14 people that have studied this, have Ph.Ds, that know this
15 technology.

16 Neither you nor I are the ones to decide this question.
17 This is something that if they want to bring a 112 enablement
18 challenge, they should be free to. But just because you and I
19 may not know how to get the ID from the i, n, and t doesn't
20 mean that we then drag in Equation 3. And that's the point
21 that I want to make.

22 When we construe claims, we construe them in light of the
23 specification. And the specification tells us that Equation 2
24 calculates the HARQ ID using i, n, and t.

25 Now, if Huawei's counsel wants to argue the patent doesn't

1 tell you how to do it, they couldn't figure out, that's an
2 enablement challenge. But that's not something that we should
3 confuse with claim construction today. And that's just the
4 final point that I wanted to make, Your Honor.

5 **THE COURT:** Okay. Thank you.

6 **MR. WHITEHURST:** Thank you very much.

7 **THE COURT:** All right. Term 3.

8 **MR. ZADO:** Good morning, Your Honor.

9 And so turning to the '825 patent, which relates to
10 initiating communications on a shared channel, the term is
11 "predetermined delay duration."

12 And I don't believe there's any dispute between the
13 parties that the claim itself, the claim language itself,
14 includes a restriction on where the delay duration has to come
15 from, much less it has to come from a node B.

16 In connection with what would be an ordinary meaning of
17 the word "predetermined," which is really the term we're
18 discussing here today, as reflected in the dictionary
19 definitions, the ordinary meaning is going to be determined
20 beforehand. That's just commonly used.

21 What we're really -- for example, if you look in a
22 dictionary, you're not going to see "node B" in a dictionary
23 definition.

24 What we're really looking at here is, does the
25 specification impose a limitation on the claim such that you

1 have to read "predetermined" in a way that's not consistent
2 with that ordinary meaning.

3 And so I'm going to jump, right now, into the
4 specification.

5 So if we could jump to slide 68.

6 So, again, when we're interpreting the terms of the claim,
7 you have to start with the plain and ordinary meaning. And the
8 standard for departing from that is a pretty exacting one.

9 And to be either a lexicographer or to have a clear
10 disavowal of claim scope, in particular the issue that we're
11 dealing with here is disavowal. That's what Huawei is
12 asserting has taken place.

13 Disavowal requires that the specification makes clear that
14 the invention does not include a particular feature. And, in
15 particular, the *Hill-Rom* case, which is referred to on this
16 slide, states that the way you make this intention clear is by
17 using words or expressions of manifest exclusion or
18 restriction.

19 And we'd submit that that simply isn't present in the '825
20 patent specification; that there's no intent to either define
21 or disavow the meaning of "predetermined."

22 So just looking generally at the summary of the invention,
23 we can see that the embodiments that are described there, they
24 simply refer to "a delay duration." And then the UE waits for
25 that delay duration in order to assist in preventing collisions

1 here. There's no reference to where the delay duration needs
2 to come from. And the abstract is consistent with that.

3 Now, when the -- the specification actually talks about
4 the issue of collisions and how to address that, the
5 specification uses the term "predefined delay duration."

6 So "predefined" analogous to predetermined. But, again,
7 there's no reference to a node B or the system information
8 coming from some other source. I'm sorry, there's no reference
9 to the delay duration coming from some other source.

10 And so what we're left with is, Huawei's attempt to limit
11 "predetermined" is really based on this one passage in the
12 specification I'm going to focus on here.

13 And the passage on its face says it's an exemplary
14 embodiment. More particularly, it's even further removed from
15 being an embodiment. It's an exemplary implementation of an
16 exemplary embodiment.

17 And so in this exemplary implementation of an exemplary
18 embodiment, the '825 patent notes that, if the T value is set
19 to what it calls an excessively small value, this can cause
20 problems because the valid period would expire too early. And,
21 more particularly, it takes a little while for the Node B,
22 after it receives the initial uplink message, to process that
23 message and include in the response message what's called "per
24 packet control information."

25 So one obvious way to avoid this problem is simply don't

1 have a delay duration that's excessively small. And, in fact,
2 if you want to maximize the ability of preventing collisions,
3 in accordance with the '825 patent teachings, you don't want to
4 have this small T value. Put another way, the longer the T
5 value, the more likely you are able to prevent collisions.

6 And I'll just jump back to slide 70 briefly. I apologize.
7 This isn't highlighted here, Your Honor.

8 But the specification actually talks about that in the
9 context of the solutions that are provided for addressing the
10 issue of collision.

11 And the way the specification describes it is the goal of
12 decreasing the time in which operation error can occur. So
13 that's -- you see -- for example, you see it in the fourth line
14 of this passage and also towards the bottom of the passage as
15 well.

16 And the way you accomplish that is you simply have a
17 longer T value so that you're not having collisions during that
18 period of time.

19 And I'm happy to walk you very quickly through the
20 animation you may recall, Your Honor, from the tutorial.

21 So in this version of the -- in this version that you can
22 see, we've waited a delay duration T. And because the UE2 is
23 still in its delay duration, when the response message to the
24 first UE comes in, it's not monitoring the control channel, so
25 there's not going to be a collision.

1 Now, assume, for example, I cut the delay duration here in
2 half, so that the delay duration T for the second UE -- and
3 somewhere around the middle of the slide here.

4 If I have that kind of a short delay duration, what's
5 going to happen is that the UE is going to start monitoring
6 control channel again. And when that first response message
7 that's first to go to the first UE comes in, we're having a
8 collision again. So we're actually causing a problem that the
9 patent is teaching you to avoid.

10 So all this tells you is that what we're really talking
11 about here is an edge case. So it's an exemplary
12 implementation of an exemplary embodiment where you're deciding
13 to wait for this excessively small predetermined delay
14 duration.

15 And so the '825 patent teaches that if you're going to do
16 this, one of the things that you can do is you can have
17 different T and P values on a cell-by-cell basis.
18 Specifically, it uses the word "can"; not "it must" or "it's
19 necessary."

20 And the reason you would do that is because then you can
21 take into account the processing capabilities of various Node
22 Bs. So if you do make that decision, which you don't have to,
23 to determine the T and P values on a cell-by-cell basis, you
24 can do that by, for example, including that in the system
25 information that's sent from the Node B to the UE.

1 So to summarize, we're not seeing words of manifest
2 exclusion here. What we're seeing is you have an exemplary
3 implementation, an exemplary embodiment, an edge case with an
4 excessively small T value. And then in that case you can take
5 the steps of having the T and P values determined on a
6 cell-by-cell basis. But if you don't, then there's no need to
7 include it in the system information.

8 Now, I focused on this particular passage because that
9 outlines what I think is the rationale behind Huawei's proposed
10 construction.

11 There are other embodiments discussed in the
12 specification, where it also refers to the T and P values being
13 included in the system information from the Node B. I'm not
14 going to walk through those now, but I'll just represent, and
15 you can look in our papers, that all of those are specifically
16 referred to as exemplary embodiments on their face.

17 Maybe departing a little bit from some of the way our --
18 the colleagues' order, I'd like to talk a little bit about the
19 two cases that Huawei relies on because I think they're
20 instructive, showing why there is no kind of disclaimer here.

21 And in the first case that Huawei relies on, the *GE*
22 *Lighting Solutions* case, this actually has the exact opposite
23 holding that Huawei is proposing.

24 Specifically, in *GE Lighting*, the Court found that the
25 structure that you're attempting to read in as a limitation

1 into the claim, because it was consistently referred to in the
2 specification as an exemplary embodiment, it was inappropriate
3 to do that.

4 And that's the case we have here. The idea of the T and P
5 values being included in the system and information is also
6 referred to as being exemplary.

7 And the second case they cite is the *Toro* case. And
8 that's inapposite. Specifically, in *Toro* the specification
9 specifically referred to advantages of the present invention,
10 not an embodiment like we have in this case. There's no such
11 statement in the '825 patent of the importance of a feature to
12 the invention.

13 And just to briefly set the context, in the *Toro* case the
14 claim limitation at issue was this said "cover including means
15 for increasing the pressure." And specifically -- or, more
16 generally, the claim is directed to a vacuum blower. A device
17 like you use in your yard. So one mode it's a vacuum, one mode
18 it's a blower. And one of the things you can do is adjust the
19 air pressure.

20 And so the question the Court was facing was whether the
21 means for increasing the pressure had to be physically
22 connected or attached to the cover.

23 And the Court first looked at dictionary definitions and
24 found them somewhat instructive but didn't really resolve the
25 question that was before the Court. So they turned to the

1 specification to help inform that decision.

2 And what we have here now is, I've put the '528 and '825
3 specification side-by-side because I think it helps illustrate
4 why the Court in *Toro* reached that conclusion, but that doesn't
5 apply in this case.

6 So specifically, in the '528 patent specification, they
7 refer to the combined vacuum blower of the present invention
8 has these advantages. And then it lists the advantages in the
9 context of the present invention.

10 And specifically in the passage the Court relied on, it
11 refers to the air inlet cover -- I'm sorry, it refers to the
12 means for limiting the pressure. This flow restriction ring is
13 actually part of the air from the cover on which it was needed.
14 And that's how the advantage of the invention is accomplished.

15 So -- and you can see that because this entire passage is
16 premised on the advantage of the invention, the Court felt that
17 that was appropriate to read that as a limitation.

18 But here we don't have that language. We don't have
19 something saying this is important to the invention. We don't
20 have a characterization of the present invention. We just have
21 these exemplary implementations of the embodiments.

22 And Courts actually have rejected this reading of *Toro*
23 that Huawei is advancing here.

24 So last question is, does Huawei's construction raise any
25 claim differentiation issues? We think it does and would

1 counsel against finding a requirement that the predetermined
2 delay duration has to be included in the system information
3 from the Node B.

4 **THE COURT:** If you want to slow down just a little
5 bit.

6 **MR. ZADO:** I apologize, Your Honor.

7 So starting with claim 1, claim 1 simply recites that the
8 UE will receive system information. And the system information
9 includes information about the temporary IDs, which we talked
10 about in the tutorial. There's no reference to inclusion of
11 the T or P values in connection with the system information.

12 And then in the body of the claim, when it talks about the
13 predetermined delay duration, it just says that the UE waits a
14 predetermined delay duration. There's no requirement with
15 respect to where that has to come from.

16 So if you look at claim 2, which depends from claim 1,
17 claim 2 recites that information indicative of the valid period
18 is acquired from the system information.

19 So now claim 2 actually talks about this "information
20 indicative," which could be the T value or the P value, and
21 specifically tells you the length of the valid period. And the
22 T value tells you when the valid period begins, because it
23 begins when the delay duration ends.

24 So claim 2 encompasses this idea of the system information
25 including the T or P values. But in Huawei's construction,

1 this limitation has now been imported into claim 1, because
2 claim 1 actually has to be read to include, in the system
3 information, the T and P value. The T value in particular,
4 but, by the same logic, the T and P values. And that would
5 simply subsume claim 2 and run afoul of claim differentiation.

6 And so unless you had any particular questions, Your
7 Honor.

8 **THE COURT:** Great. Thank you.

9 **MR. BETTINGER:** Thank you, Your Honor.

10 If we could go to slide 89, please.

11 Your Honor, hearing that argument, they're just trying to
12 walk away from their patent.

13 At a basic level, this is that collision delay. You have
14 these temporary IDs are sent down from the base station. And
15 if they come at the same time, one might get it -- two UEs
16 might get it at the same time, so you introduce this delay.
17 And that, in theory, should help that maybe there won't be a
18 collision. That's the context of this.

19 And that temporary ID and the delay period and the valid
20 period are all sent down from the base station. And if we look
21 at slide 89, which is the same language counsel, I believe, had
22 up on the screen, it explains why.

23 T -- if we look at what's underlined there in red and
24 highlighted -- and just for note, T is the delay period, and P
25 is the valid period. So there's a delay T and a valid period

1 P.

2 "Therefore, T and P" -- and I believe, it should say "are
3 closely related." I think this is how the patent reads -- "are
4 closely related to the processing capability of the Node B" --
5 which is the base station -- "can have different values on a
6 cell-by-cell basis."

7 So you have all these cells out there. And each one,
8 maybe it's only this large, maybe it's big, maybe there's other
9 interference. So it has its own T and P values. And the
10 patent tells you, it has to.

11 As a result, the next sentence then says, the T and P
12 values are included in system information -- which everyone
13 agrees comes from the base station -- to be transmitted on the
14 cell-by-cell basis.

15 So when you get the temporary ID, you also get your delay
16 duration and your valid period because it's going to be
17 dependent on the cell. And that's what the patent tells us.
18 Tells us that repeatedly.

19 As we pointed out in our brief, if you look at the
20 description -- if we could go to slide 93, Figure 7. The
21 T and P values from system information broadcast from a Node B
22 of the current cell. It says "current cell" because when you
23 move to a new cell you have to get new values.

24 Same thing with reference to figures 8, figures 9,
25 Figure 11 and Figure 12 has that same language. You're going

1 to get separate T and P values from the current cell because
2 those values are going to change by cell. So it does need to
3 come from the base station. It's set out in -- in the patent,
4 that's the only way it can be done.

5 With respect to the claim differentiation argument that
6 counsel made -- if we could go to slide 98.

7 As I understand their argument here, it's, well, if it had
8 to come from the base station, then why would you put it in a
9 dependent claim?

10 Two points.

11 First of all -- and this is talking about the valid
12 period, not the duration. The second and more important is,
13 it's a limitation on the valid period. It's acquiring
14 information indicative of the valid period.

15 So that's a further limitation on the valid period. But
16 we would submit these dependent claims confirm our position
17 because it reiterates that that valid period is coming from the
18 system information in the current cell. So that, in fact,
19 those claims don't -- are somehow differentiators, they're
20 confirming our position.

21 **THE COURT:** All right.

22 **MR. BETTINGER:** Thank you, Your Honor.

23 **THE COURT:** Thank you.

24 Let's go on to number 4.

25 **MR. LEWIS:** This is the '195 patent.

1 So I think, fundamentally, Samsung makes two errors here.
2 First, the claims say nothing about a subset or restricting the
3 channels.

4 Second, the claims say nothing about a monitoring set.
5 They talk about a set of control channel candidates, which the
6 specification defines and uses in the way Huawei suggests
7 construing this term.

8 Essentially, Samsung wants to rewrite these terms, these
9 claims, to fix what errors they made in writing them, to make
10 them somehow consistent with the invention. However, claims
11 must be construed based on their terms, not on what Samsung
12 wished it had written.

13 Real quickly, looking at the figures 5A in the
14 specification, this clearly says a control channel candidate
15 set, which tracks the claim term that says control channel
16 candidates, is all the control channels. The green going up
17 and down are each of the control channels.

18 And specification distinguishes between that and the
19 monitoring set, which again doesn't appear in the claim. And
20 that's just the control channels that are selected, the subset
21 for this particular UE.

22 And to confirm that, there's another figure that shows
23 absolutely the same thing. And that gets us to some law which
24 points out that when the specification, which is a dictionary
25 for the claims, tells you something, you use that construction,

1 in the construction of the term when it appears in the claim.

2 Here we have the claim language itself. And I think this
3 is somewhat helpful because it tells us a few things that I
4 mentioned earlier.

5 First of all -- and this slide is actually not in the
6 printout. I added it this morning, Your Honor. I apologize.

7 There's nothing in here about selecting a subset. It just
8 says you're determining a set of control channel candidates.
9 Doesn't say what they are. Tells you some characteristics of
10 the control channel candidates, and then tells you to monitor
11 at least one of them.

12 There's nothing about any subset in here. And there's
13 also no monitoring set in here. It's a set of control channel
14 candidates which tracks the control channel candidate set in
15 figures 5A and 5B that I just had up a moment ago.

16 Samsung actually acknowledges this.

17 If I could actually ask that Samsung slide 100 be put up.
18 I'm going first. I didn't want to have to come back for no
19 reason, so I saw their slides. 100.

20 So it says there, the claims are directed to the
21 monitoring set.

22 No, they're not. It doesn't say that.

23 Additionally -- if I could go to 96 of yours, yes.

24 Here it says, the '195 invention restricts the number of
25 control channels the terminal has to monitor. Well, the claim

1 doesn't say that. Samsung wants the claim to say that.

2 We can go back to mine now. Thank you.

3 So, basically, I think what happened here is the claim
4 drafter kind of messed up and meant to say "monitoring set."
5 Said "set of control channel candidates."

6 The monitoring set has the meaning of the subset and the
7 ones that the UE would monitor. And it is the restricted set.
8 But that's not in the claim. But the term that actually is in
9 the claim means, as our construction proposes, the systemwide
10 set of control channels.

11 The law is clear that you don't rewrite a claim in
12 construction, even if you get a nonsensical result, which is
13 basically Samsung's point.

14 The monitoring set is something different than the control
15 channel set. Right.

16 And the quote here on the top of this slide, I think it's
17 the first time I've actually quoted a case in the title of a
18 slide, but I couldn't resist.

19 Construe the claim, the Federal Circuit says, as written,
20 not as the patentees wish they had written it.

21 That is basically the issue with the '195 patent. Samsung
22 argues that the identifier -- they spend a lot of time in their
23 brief, and they're going to do it in their slides, talking
24 about the identifier and how the identifier never allows you to
25 select the control channel candidate set in the patent.

1 Well, that's true. But it still says "control channel
2 candidate set" in the claim, not "monitoring set." And the
3 patent spec never uses "control channel candidate set" to mean
4 the subset. And there's a couple of cases here talking, again,
5 about not redoing claims.

6 So to end, I'd just like to bring up my old friend, Figure
7 5a, here and point out that Samsung claimed the bottom, "the
8 control channel candidate set." They wished they'd claimed
9 "the monitoring set."

10 Somebody messed up. That's not Huawei's problem. It's a
11 claim that just maybe can't be enforced. That's, again,
12 Samsung's problem. And it's not for the Court to fix that for
13 Samsung.

14 Thank you, Your Honor.

15 **THE COURT:** Thank you.

16 **MR. WHITEHURST:** Alan Whitehurst for Samsung.

17 If I could pull up slide 86, please. Just to be clear,
18 Your Honor, the drafter of that claim did not mess up.

19 Huawei's argument that you just heard is based on two
20 theories. One, that there's nothing in the claim about
21 limiting. That's not true.

22 Second, that they said there's nothing in the claim about
23 monitoring. Again, this isn't true.

24 And I just want to direct your attention to claim 9, which
25 is one of the claims at issue.

1 You heard Counsel say there's nothing in the claim about
2 limiting. Well, if you look at the language that's highlighted
3 on blue, "based on an identifier of the terminal," this is how
4 you do the limiting that counsel just said is not in the claim.

5 As we discussed during the tutorial, it would be very
6 inefficient for the phone to scan all of the available control
7 channels. That's why the phone uses the terminal to limit
8 exactly what counsel just told you is missing from the claim.

9 Second point I'd like to make is, counsel said there's
10 nothing in the claim about monitoring. Again, not true.

11 If you can direct your attention to the bottom part of the
12 claim, you'll see it's monitoring at least one control channel
13 candidate belonging to the set of control channel candidates.

14 So in the top half of the claim you see the limiting. In
15 the bottom half of the claim you see monitoring.

16 What are you monitoring? You're monitoring that smaller
17 set that we discussed in the tutorial. This is the whole point
18 of the invention.

19 Now, the crazy thing we're seeing with this term is,
20 Huawei wants you to ignore the face of the claim, what I just
21 walked you through. They want you to take the claim, read on
22 something that's completely inconsistent with the
23 specification, and then read the claim on what the patent
24 describes as prior art.

25 They want the set of control channel candidates to be

1 everything. That's the opposite of the invention.

2 I have a number of slides here I can go through if it
3 would help the Court. We can go to slide 92. I'll go through
4 these quickly. I think I can make the point.

5 I mean, is Huawei's construction inconsistent with
6 surrounding claim language? We just saw that. Yes.

7 They're telling you that it's all available control
8 channels. They're ignoring the rest of the claim, when we just
9 saw that the set of control channels is based on the ID. All
10 available control channels, not based on the ID. The smaller
11 set, which we've explained in our briefs is the set of control
12 channels, is based on the ID of the terminal.

13 Again, the specification, I hinted at this during the
14 tutorial, when we look at how the patent describes the
15 invention, it's about restricting the number of control
16 channels that the terminal has to monitor.

17 How does it do this? It uses the terminal's ID. We see
18 this in the patent over and over again, where it's talking
19 about restricting, limiting, and then monitoring that
20 restricted set.

21 We see it in column 7, in Figure 7. We see it again in
22 column 8, in Figure 9. And we see it again in column 6, in
23 Figure 5A.

24 Now, I don't want to belabor this point, but the claims
25 are directed to the monitoring set, the exact opposite of what

1 you just heard Huawei's counsel.

2 You'll see, when you compare this figure with 5A, you're
3 taking the terminal, the ID of the terminal, to get this
4 smaller set, and then you're monitoring. And we see the
5 antecedent basis, this smaller set that you just got.

6 Now, Huawei's construction is based on this misreading of
7 Figure 5A, that the language "control channel candidate set" is
8 referring to the bottom of Figure 5A.

9 But they're missing the point. There's a big control
10 channel candidate set that's all of the channels. And there's
11 a small control channel candidate set. That's the set that's
12 been limited based on the terminal's ID. And these claims are
13 directed to that latter set, that monitoring set that you've
14 got from using the terminal's ID, to reduce it so you can save
15 battery power and processing power.

16 I have a whole nother set of slides. I don't know that I
17 need to go through them.

18 But it would be crazy to take these claims, ignore the
19 invention in the patent, then read them on the prior art in
20 something that Huawei argues in its invalidity contentions
21 isn't even described in the patent.

22 They're trying to ignore the claim language and then read
23 them on something that's completely contradictory to the patent
24 itself. And that would run afoul of the basic cannons of claim
25 construction that you construe the claims to be consist --

1 **THE COURT:** I understand. Thank you.

2 **MR. WHITEHURST:** Thank you, Your Honor.

3 **MR. LEWIS:** Your Honor, if I may have a moment?

4 **THE COURT:** You may have a moment.

5 **MR. LEWIS:** So counsel said a couple of things that I
6 said weren't correct. I just wanted to address that.

7 I didn't say there was no monitoring in the claim. I very
8 distinctly, I believe, tried to say there was no monitoring set
9 in the claim. And, indeed, there is not.

10 As far as the limiting, there is actually -- again, he's
11 relying again on this terminal ID and ignoring the meaning of
12 the set of control channel candidates. But, again, he's
13 assuming that there's limiting. Not that the determining
14 doesn't give you the entire set of all the available channels,
15 which is actually what the language in the claim says, if you
16 read it as the specification, for example, Figure 5A tells you
17 to read it.

18 And, finally, the specification actually does talk about
19 monitoring all the available channels in the system. And that
20 would be in column 2, roughly lines 49 through 55.

21 **THE COURT:** Great. Thank you.

22 All right. On to the fifth and final term.

23 **MS. YANG:** Number ten.

24 So this is just -- for context reminder, this is the
25 patent that is directed to that active period of a UE in the

1 LTE system, where if there are more packets of information
2 coming down for it, there's different timers that are used to
3 keep the UE awake.

4 So there's three parts to this argument. First, Huawei's
5 position is the preamble needs to be construed, that the
6 preamble is limiting. Second, that once the preamble is
7 limiting, it's indefinite. And, third, that it needs to be
8 construed.

9 And, I believe, in connection with the Huawei patents,
10 Counsel for Samsung cited the *02 Micro* case as kind of the
11 seminal case that says if there's a dispute over the claim
12 construction, you've got to construe that because otherwise
13 you'll probably end up construing it down the line. So let's
14 just do it now.

15 So the term here, "controlling an active time period
16 during a DRX operation," appears in the preamble of both
17 independent claim 1 and independent claim 7.

18 And so it doesn't -- so if we look at the language of the
19 claims, it's clear that the preamble is what the '588 patent is
20 really directed to.

21 It's the part of the claims that talks about -- and it's
22 the only part of the claims that talk specifically about this
23 concept of controlling that active time period during a DRX
24 operation. And that's what the '588 patent is directed to. So
25 without that preamble, it's unclear what the context is for the

1 rest of the claims.

2 And it's the sort of thing where I think if the jury were
3 to look at it, and they were told, oh, you can ignore the
4 preamble, looking at that it's not clear that that's -- you
5 know, that that's starting a first timer, starting a second
6 timer, restarting a second timer, that that specifically has to
7 do with the DRX operation and this active time period during
8 the DRX operation.

9 So here, during prosecution of the application that led to
10 this patent, the patentee added this language "controlling an
11 active time period" to the preambles of the independent claims.
12 And they were claims 23 and 29 that correspond to 1 and 7 here.

13 And during prosecution, the patentee noted that the claims
14 were -- were directed to -- or that the examiner had objected
15 to the claims because they were directed to performing a DRX
16 operation but not reciting any limitation related to a DRX
17 operation.

18 And so the patentee amended claims 23 and 29, as suggested
19 by the examiner, to recite this controlling and active time
20 period language. And then the applicant went on to say that
21 these amendments further clarify -- the preamble at the bottom
22 there, "these amendments further clarify that the controlling
23 of the active time period is part of the DRX operation."

24 They made other representations about this present
25 invention in the preamble during prosecution. They described

1 to the Patent Office that the present invention is directed to
2 reducing power consumption during a DRX operation. Again,
3 that's the context of the preamble of these claims.

4 And then the patentee distinguished the prior art
5 reference *Ohta* as not controlling an active period. And this
6 is that same amendment in which the patentee had amended the
7 preambles of these independent claims.

8 And *Invitrogen vs. Biocrest*, which we cited in our
9 briefing, says that a preamble is limiting when it's used in
10 the prosecution to overcome prior art.

11 So if we look at the specification of the patent, as well,
12 it clearly says that what the present invention is related to
13 is this performance of the DRX operation. And so without the
14 preamble, the present invention of the '588 patent, as
15 described in the specification, is not found in those
16 independent claims.

17 So the first -- so Huawei's first position is that the
18 preamble is limiting.

19 So going on to the second position, for the most part, I'm
20 just going to rely on our briefing on this point. Just a
21 couple points to make.

22 One is, under the *Nautilus vs. Biosig* case, 134 S.Ct.
23 2120, a claim must inform those skilled in the art about the
24 scope of the invention with reasonable certainty. Otherwise,
25 it is invalid under 112-2.

1 And so here the claim, as it's written, this "controlling
2 an active time period during a DRX operation" and then the
3 claim goes on to talk about starting the first and the second
4 and restarting the second timer, that claim as written has no
5 end period for the active time period.

6 And so Huawei's position is just it doesn't make -- it
7 doesn't make sense to one of skill in the art that you would
8 control an active time period if there's never any ending to
9 it. You're just starting and restarting. But that's
10 meaningless if you don't have some sort of end to the time
11 period. But, as I said, for the most part we're just going to
12 rely on briefing on this point.

13 So then the third piece is that Huawei's proposed
14 alternative construction is consistent with the intrinsic
15 evidence. And it's really the way that the preamble can be
16 interpreted to be meaningful and not be indefinite.

17 And so this is -- these claims are directed to the
18 embodiment depicted as Figure 6 in the '588 patent. I don't
19 think there's any dispute over that.

20 And Figure 6 shows that timer 1, as described in the claim
21 as this "T(MINIMUM_ACTIVE)" which is shown in the box labeled
22 615, its start coincides with the start of the active period,
23 which is right before it, in 610.

24 And then at 627, you see that second timer
25 "T(activeperiod end)" starting or restarting.

1 And then in 630, the second timer expires. And I did want
2 to point out there that one thing that seems, you know,
3 probably not coincidental, because you can pick what your
4 variables are named, is that the second timer is called
5 "active_period_end," thus indicating an end of the active
6 period.

7 And then it's only when that second timer expires in 630
8 that you would go on -- that your active period will be over
9 and you can go into sleep mode.

10 And the applicant clarified during prosecution, as well,
11 that this is the first timer and the second timer that they
12 were talking about.

13 So the key to Huawei's proposed alternative construction
14 is really that concept that I mentioned earlier, about being
15 able to end the active time period.

16 And so what is disclosed here in the intrinsic evidence
17 that -- that the active time period is sort of identified or
18 it's governed or, you know, dependent on or something -- you
19 can use different words -- but it's identified with that start
20 of the first timer and the end of the second timer.

21 So, of course, claim construction is an art. It's not a
22 hard-and-fast science, even though it would make a lot of
23 things easier if it were. So, you know, I think we could offer
24 suggestions for wording, or the Court can certainly do so.

25 But the idea, the crux of what Huawei's position is, is

1 that it's only during an active period where the start of a
2 first timer indicates the start of the active period, and the
3 end of a second timer indicates the end of the active period.
4 That's what we're really trying to get at.

5 And just a couple of points, quickly, on that.

6 So during prosecution of the parent application -- and,
7 Allen, if we could go to that slide showing that
8 September 23rd, 2011 amendment.

9 Apologize. This one did not make it into the book of --
10 this one -- the book of slides.

11 But during prosecution of this parent application, the
12 patentee said consistently that the UE is monitoring control
13 data via a shared control channel during the time period from
14 the time period the first timer starts to the time the second
15 timer expires. So, again, it's that second timer expiration
16 that signals the active period is over.

17 And Samsung's expert agrees with this principle. In a
18 declaration that he put in, in response -- in Samsung's reply
19 brief, he says that since the second timer is used to terminate
20 the active period, that that means it controls it. So
21 that's -- that's the crux of the alternative construction that
22 Huawei proposes.

23 Just really quickly, claims 4 and 10, our position is that
24 does have different scope from claims 1 and 7. The way it's
25 written, claims 4 and 10, you know, it specifically requires

1 that the first and second timer -- excuse me, that it requires
2 the first or second timer to be running.

3 Our position, as I've been discussing, is that it's that
4 end of the second timer that really signals the end of the
5 active period.

6 So there's more slides here, but unless you have
7 questions.

8 **THE COURT:** Great. Thank you, Ms. Yang.

9 **MR. ZADO:** I just heard counsel for Huawei indicate
10 that the preamble should be found to be limiting because the
11 preamble, in this instance, provides context for the claimed
12 invention as set forth in the body of the claim.

13 However, that's exactly a circumstance where preambles
14 have been found not to be limiting. And, particularly, if I
15 could direct your attention to the *Textron Innovations* case,
16 which we cited in our briefing, the Court there held that when
17 the preamble simply recites the general context of which the
18 improvement is found in the body of the claim, that's not
19 limiting.

20 Now, the second issue that counsel for Huawei pointed to,
21 as to why the preamble should be limiting, is with respect to
22 the amendment made in connection with the *Ohta* reference and
23 the general amendment to the preamble.

24 So if we could -- so starting with the amendment that
25 added that language to the preamble, of controlling an active

1 time period, as counsel for Huawei noted, this was simply to
2 further clarify that -- the controlling of the active time
3 period as part of the DRX operation.

4 And, again, that's a circumstance where simply a
5 clarifying amendment made to a preamble doesn't render the
6 preamble limiting.

7 Again, we have a couple of cases here, including the
8 *Marrin* case and *Textron* case again.

9 For example, in the *Textron* case there was a particular
10 term "improvement," that was replaced with the term
11 "replacement." And that was just intended to define the
12 principle use of the invention, similar to here, the principle
13 use is in the context of the DRX operation. But that doesn't
14 import a limitation of the claim.

15 Now, turning to the amendment made in connection with the
16 *Ohta* reference, those arguments and that amendment wasn't
17 directed to the preamble. Rather, what the amendment was
18 directed to was the operation of the timers that are recited in
19 the body of the claim.

20 And here's where I would like to maybe refer to -- pull up
21 Exhibit 6 and go to page 7.

22 And if you could highlight the box on the second to last
23 paragraph on page 7, starting "independent claims 23 and 29."

24 So this is the passage that sets up the entire discussion
25 of *Ohta*. And what the patentee or applicant was arguing here

1 is that the claims 23 and 29 are directly controlling the
2 active time period by reciting the UE first starts the first
3 timer and the UE then starts the second timer, then restarts
4 the second timer. So it's the recitation of the operation of
5 those timers that actually controls the active period.

6 And then if you can now go to page 9, please. And then
7 you can see -- if we can highlight the second paragraph, "While
8 *Ohta*."

9 So this is now where the applicant takes that description
10 of the timers and compares it to *Ohta*. And particularly what
11 the applicant is pointing out here is that the counters that
12 were disclosed in *Ohta* were different than the timers that are
13 recited in the body of what were then claims 23 and 29 in the
14 application.

15 Now, if you can go back to the page as a whole.

16 And so when -- when the patentee is referring to the
17 operation of these counters in connection with the active time
18 periods, it's specifically referring to the idea that the
19 timers in the -- in the claims 23 and 29 of what was the parent
20 to the '588 patent, those timers do control the active time
21 period; whereas, the timers that are the counters that are set
22 forth in *Ohta* do not.

23 So, again, the argument is being made directly with
24 respect to the timers and the counters that are part of the
25 body of the claim.

1 And if we can go back to the presentation, please.

2 And so then when the applicant summarizes the argument,
3 the applicant states that, what *Ohta* fails to teach or suggest
4 is that starting the UE with the first timer or starting or
5 restarting the UE in the second timer, which are again elements
6 in the body of the claim, not the preamble.

7 And then if you look at the applicant's reason or the
8 examiner's reasons for allowance, which came in the next office
9 action, they specifically pointed to the amendment in the --
10 that was made in the body of the then pending claims with
11 respect to restarting the second timer, as that was what
12 allowed the claim.

13 So the examiner understood that argument over *Ohta* to be
14 directed to the concept of how the timers worked, and not the
15 preamble.

16 So the next issue that counsel for Huawei raised is that
17 the claims are indefinite, assuming that the preambles are
18 limiting.

19 So just, first, if the preambles are not limiting, I think
20 we can all agree that that doesn't render the claims
21 indefinite.

22 But even if the preambles were limiting, one of ordinary
23 skill in the art would still find that the preambles inform
24 those of skill in the art about the scope of the invention.
25 That's the key.

1 If you look at the terms that are actually used in the
2 preamble -- so, for example, "controlling an active time
3 period" -- these are ordinary terms that anyone of ordinary
4 skill in the art would understand.

5 So what -- what Huawei's argument really boils down to is
6 starting and restarting of a timer doesn't control anything;
7 therefore, we have to read all of these limitation into the
8 claim. And that's simply -- that's not correct. And it also
9 isn't supported by the case law on which they rely.

10 So looking at the specification, for example, in the
11 abstract and in the summary of the invention, the patent
12 specifically states that starting and restarting the timers
13 controls the active time period. So we actually have
14 disclosure in the patent specification that tells you that.

15 So what -- really, what Huawei's argument is, it's an
16 enablement argument. They're arguing that these passages in
17 the specification that tell you, you control timers -- you can
18 control the active time period by starting and restarting
19 timers, that doesn't enable the invention. That's not enough.

20 And I also wanted to point to, there was one example in
21 the file history as well. Yes. Again, it's in the file
22 history. Again, it confirms that it's the starting or
23 restarting the timers controls the active time period. So
24 that's directly contradictory to what Huawei's position is as
25 to why the claims should be indefinite.

1 And so I don't think we need to walk through the operation
2 of the first and second timers. I think we relatively agree on
3 how they operate. But I think there's one aspect that counsel
4 for Huawei glossed over in their description.

5 If we could take a look at slide 111 of Huawei's
6 presentation.

7 And here Huawei notes that the principle of the invention
8 is that, for example, timer 2 is used to extend the active
9 time, i.e. by restarting the second timer, which is explicitly
10 reciting the body of the claim, you're controlling the active
11 period.

12 Now we can turn to the presentation. And if we can turn
13 to slide 133.

14 Now, this is what I would like to do is try and address
15 the proposed construction that Huawei offers. The starting and
16 restarting the timers can only take place between the starting
17 the first timer and ending of the second timer.

18 And that's not consistent with the language of the claims,
19 which doesn't recite a specific endpoint for the timers. But,
20 more particularly, it would also read out this preferred
21 embodiment that's recited in connection with method 1 of Figure
22 6.

23 And specifically in this embodiment -- and I'll point to
24 the figure here to help illustrate it -- you can see that in
25 step 630, in green at the bottom of the figure, the yes -- the

1 yes at the left-hand side of that figure indicates the second
2 timer has now expired. So the second timer is over. But after
3 step 630, you then move to step 640. And in step 640 you have
4 to complete the process of the HARQ packets. And during that
5 period of time, the Huawei UE receiver would have to stay
6 active in order to continue to receive those packets.

7 And then only after that HARQ processing is completed and
8 all those HARQ -- all those HARQ retransmitted packets have
9 been received, which is in step 640, can you then enter sleep
10 mode, which is in step 635.

11 And the sleep mode is where the receiver turns off and
12 you're no longer in active mode. So it's clear that, as
13 illustrated in connection with this method, we have this period
14 of time where the receiver has to stay active.

15 Now I'd like to address, briefly, the comment that was
16 made in connection with the 9/28/2011 amendment in their
17 presentation.

18 And specifically counsel for Huawei referred to that
19 amendment as reading in some additional limitations on the
20 invention that needed to be incorporated into the claim.

21 And if we could go to -- oh, I apologize. This isn't in
22 the presentation they've given us. So I believe it might have
23 been slide 130 in their presentation.

24 So you see in the context of this second timer governing
25 the end of the active period, they're trying to read in some

1 limitation from the description in the argument in the
2 9/28/2011 amendment.

3 Now, critically, the language that we're construing here
4 wasn't in the claims when this argument was made. The language
5 "controlling an active time period" was actually added in the
6 May 2012 amendment which took place later.

7 So it doesn't make sense that this -- this argument as to
8 how the claims should be construed should apply to that
9 language in the preamble.

10 Now, if we could briefly turn to their slide 131. I'm
11 sorry, 131 of theirs, please.

12 **MR. BETTINGER:** We don't have it.

13 **MR. ZADO:** Then just to talk through it, in the slide
14 where they specifically referred to the testimony of
15 Dr. Valenti, Samsung's expert, in terms of how he describes how
16 the second timer controls the active time period.
17 Unfortunately, what you got was just a snippet of that
18 description, where it only talks about -- it's here in slide
19 129.

20 So you just get a snippet where he talks about the active
21 period, because the second timer is used to terminate the
22 active period, one of the ordinary skill in the art understands
23 it controls the active period. That's one way that it does it.
24 But Dr. Valenti's testimony wasn't limited to that.

25 And if we could turn to slide 129 of our presentation.

1 It's a little difficult to read, but you can see this is
2 actually Dr. Valenti's full testimony in context. He's
3 actually responding to one point that was being raised by
4 Huawei's expert, Dr. Akl.

5 Specifically, what Dr. Valenti also testified is that you
6 control the active time period not just because of the ending
7 of the second timer, the expiration of the second timer, but
8 simply by starting and restarting the second timer. Each of
9 those instances prevents you from entering sleep mode. That's
10 when the second timer is running. So that controls the active
11 time period.

12 And so unless Your Honor has any further questions, that's
13 all I have.

14 **THE COURT:** Thank you.

15 Ms. Yang, did you have anything further that you wanted to
16 add?

17 **MS. YANG:** No, Your Honor.

18 **THE COURT:** All right.

19 All right. Thank you, all, very much. Your argument was
20 illuminating, somewhat.

21 (Laughter)

22 **THE COURT:** And I appreciate it.

23 So as soon as I can, I will get out a claim construction
24 order, and I'll set a case management conference, and we'll
25 figure out how to wrap everything up.

1 Thanks very much.

2 (Counsel thank the Court.)

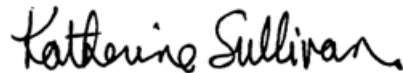
3 (At 11:22 a.m. the proceedings were adjourned.)

4 - - - -

5
6 **CERTIFICATE OF REPORTER**

7 I certify that the foregoing is a correct transcript
8 from the record of proceedings in the above-entitled matter.

9
10 DATE: Friday, August 25, 2017

11
12
13 

14
15 _____
16 Katherine Powell Sullivan, CSR #5812, RMR, CRR
17 U.S. Court Reporter
18
19
20
21
22
23
24
25